

CISNEROS DECLARATION
EXHIBIT HHH
REDACTED VERSION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

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VIDEO DEPOSITION OF KATHRYN SHAW, PH.D.

JULY 3, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

09:37:14 1 Q. How about Batts and the service sector customer
09:37:17 2 service study? AT&T?

09:37:21 3 A. AT&T, I don't recall that paper.

09:37:24 4 Q. How about Cockburn in 1999 about
09:37:26 5 pharmaceuticals?

09:37:27 6 A. Yes, that's an insider paper.

09:37:29 7 Q. And Landers in 1996 about law firms?

09:37:32 8 A. That's not an insider paper.

09:37:34 9 Q. In terms of vending the field, it seems that
09:37:40 10 there have been many people that preceded you in doing
09:37:43 11 this work; isn't that fair?

09:37:45 12 MR. KIERNAN: Object to form?

09:37:47 13 THE WITNESS: There have been isolated
09:37:48 14 instances in which people have done work that is of an
09:37:52 15 insider econometric nature. But to really call it a
09:37:56 16 field and to outline the methodology for doing this type
09:38:01 17 of work had not been done before. And it was really a
09:38:06 18 nascent field as we developed it.

09:38:09 19 And the paper we wrote on the steel
09:38:12 20 manufacturing plants is really one of the original papers
09:38:16 21 showing how insider econometrics would be done.

09:38:21 22 BY MS. DERMODY:

09:38:21 23 Q. And that paper was done in what year?

09:38:24 24 A. The late '90s.

09:38:26 25 Q. Uh-huh. Do you know if anyone other than you

09:38:28 1 teaches a course covering insider econometrics as a
09:38:32 2 label?

09:38:34 3 A. I don't know.

09:38:36 4 Q. You're not aware of anyone else that does; is
09:38:38 5 that correct?

09:38:39 6 A. I'm not aware of it.

09:38:42 7 Q. Okay. And this field that you claim you
09:38:44 8 invented, insider econometrics, how is insider
09:38:50 9 information used?

09:38:51 10 A. Insider information is used to understand the
09:38:54 11 nature of the environment and form testable hypotheses.

09:39:05 12 Q. And is this done through developing a study?

09:39:08 13 A. What do you mean by "a study"?

09:39:10 14 Q. Why don't you tell me how this is done. How do
09:39:13 15 you go about understanding the nature of the environment
09:39:15 16 and forming testable hypotheses?

09:39:19 17 A. You go to individual firms, and you talk to
09:39:22 18 them about their production function, about their human
09:39:26 19 resource practices, about their environment, and you
09:39:31 20 identify a testable hypothesis that you would like to
09:39:38 21 research.

09:39:40 22 Q. And does this approach necessarily involve
09:39:43 23 doing interviews?

09:39:45 24 A. Yes, it does.

09:39:46 25 Q. Could a survey also be used in place of

09:39:48 1 interviews?

09:39:50 2 A. Surveys can be part of the insider approach,

09:39:53 3 but interviews are important.

09:39:59 4 Q. Let me ask you, if you were studying a pay

09:40:02 5 system in a large firm, would you want to speak with the

09:40:06 6 director of compensation to get an overview of how the

09:40:10 7 pay system was designed to work?

09:40:12 8 MR. KIERNAN: Object to form.

09:40:13 9 THE WITNESS: You'd want to speak to the --

09:40:16 10 yeah, the director of compensation, but also to -- to

09:40:18 11 others, as well.

09:40:19 12 BY MS. DERMODY:

09:40:20 13 Q. And if the company you were studying gave you a

09:40:23 14 list of the senior managers most knowledgeable about the

09:40:26 15 practice you were studying, would you want to speak with

09:40:29 16 those individuals?

09:40:31 17 MR. KIERNAN: Object to form.

09:40:33 18 THE WITNESS: I'd want to speak with an

09:40:35 19 assortment of people in the company in order to ascertain

09:40:38 20 the, you know, way in which compensation practices are

09:40:43 21 implemented.

09:40:44 22 BY MS. DERMODY:

09:40:45 23 Q. My question is, if you were given a list of

09:40:48 24 senior managers most knowledgeable about the practice, do

09:40:50 25 you have any reason to ignore that list?

09:40:54 1 MR. KIERNAN: Object to form?

09:40:55 2 THE WITNESS: To ignore the list? In what

09:40:57 3 sense?

09:40:58 4 BY MS. DERMODY:

09:40:58 5 Q. Ignore it and go pick your own people to

09:41:00 6 interview.

09:41:05 7 A. I -- you know, I'd want to develop a list.

09:41:08 8 Whether I used their list or whether I have some prior

09:41:11 9 knowledge of people I want to interview, I can't say.

09:41:14 10 Q. How would you pick a list of people to

09:41:16 11 interview that was different than what the company shared

09:41:18 12 with you as a starting point?

09:41:28 13 MR. TUBACH: Object to the form of the

09:41:29 14 question.

09:41:31 15 MS. DERMODY: Excuse me. There is one person

09:41:32 16 defending. Thank you.

09:41:35 17 THE WITNESS: Would you repeat the question?

09:41:36 18 BY MS. DERMODY:

09:41:37 19 Q. Sure. I asked you if the company gave you a

09:41:41 20 list of the senior managers most knowledgeable about the

09:41:44 21 practice, would you use that list as a starting point for

09:41:47 22 interviews?

09:41:48 23 MR. KIERNAN: Object to form.

09:41:49 24 THE WITNESS: I would use that list. I would

09:41:50 25 gather my own list. You know, I -- probably I would

09:41:56 1 interview people on their list.

09:42:00 2 BY MS. DERMODY:

09:42:00 3 Q. Is there any reason you wouldn't interview the

09:42:02 4 people on their list as a starting point?

09:42:06 5 MR. KIERNAN: Same objection.

09:42:07 6 THE WITNESS: It depends on whether I'm

09:42:09 7 knowledgeable about the company, and I have other people

09:42:11 8 I'd like to identify to interview.

09:42:13 9 BY MS. DERMODY:

09:42:13 10 Q. Okay. Let's assume you aren't knowledgeable

09:42:16 11 about the company. Would you start with a list the

09:42:19 12 company gave you?

09:42:21 13 MR. KIERNAN: Object to form.

09:42:22 14 THE WITNESS: I would begin with that list. I

09:42:23 15 might expand on that list.

09:42:25 16 BY MS. DERMODY:

09:42:25 17 Q. Okay. That's fair.

09:42:37 18 Is it true that insider econometrics analysis

09:42:40 19 is ultimately interested in estimating the effects of

09:42:44 20 organizational level practices?

09:42:46 21 A. Of organizational what?

09:42:49 22 Q. Level practices.

09:42:50 23 A. Of organizational practices, yes.

09:42:52 24 Q. And what does that mean?

09:42:54 25 A. We want to see whether human resource

09:42:57 1 management practices have effects on productivity or on
09:43:03 2 profitability or on some measure of performance.
09:43:07 3 Q. And in doing that work, is it true you're
09:43:11 4 looking at company-level policies, company-level
09:43:16 5 incentives?
09:43:17 6 A. Or they may be department level, but we're
09:43:20 7 looking at policies that the company uses, yes.
09:43:22 8 MS. DERMODY: Next in order.
09:43:22 9 THE REPORTER: Exhibit 2847.
09:43:23 10 (Exhibit 2847 was marked for identification.)
09:44:10 11 BY MS. DERMODY:
09:44:11 12 Q. Dr. Shaw, do you recognize what has been marked
09:44:13 13 as Exhibit 2847?
09:44:14 14 A. Yes, I do.
09:44:15 15 Q. And what is this?
09:44:16 16 A. This is a paper I wrote.
09:44:20 17 Q. Okay. And this is a paper that was published
09:44:23 18 in 2009; is that correct?
09:44:25 19 A. That's right.
09:44:26 20 Q. Okay. If you could please turn to what is
09:44:28 21 marked as page -- internally as page 614 of the document.
09:44:33 22 It's a few pages in.
09:44:39 23 A. Okay.
09:44:41 24 Q. And if you'll look in the left column of that
09:44:46 25 page, about four paragraphs down, there is a paragraph

09:44:50 1 that starts, "Data across establishments or firms as a
09:44:54 2 primary source of the identification of the effect of an
09:44:57 3 organizational innovation on productivity."
09:45:00 4 Do you see that?
09:45:01 5 A. Yes.
09:45:01 6 Q. What does that mean?
09:45:03 7 A. It means that in attempting to identify the
09:45:07 8 effect of a human resource management practice on
09:45:11 9 productivity, one source of data would be to gather data
09:45:15 10 across establishments or firms in order to estimate the
09:45:19 11 regression model.
09:45:21 12 Q. And then going over to the right column of the
09:45:25 13 same page, close to the top, there is a second header
09:45:30 14 which is not bold, says, "3.1, corollary one, it is
09:45:36 15 always nice to get more data to prove your point."
09:45:39 16 Do you see that?
09:45:40 17 A. Sure.
09:45:41 18 Q. What does that mean?
09:45:43 19 A. It means that when you're working with
09:45:45 20 companies, you want to ask for data to do your
09:45:52 21 econometrics analysis, and it means exactly what it says.
09:45:57 22 More data is better than small amounts of data.
09:46:03 23 Q. And why is that?
09:46:05 24 A. Because it increases the power of your
09:46:07 25 econometrics test.

09:46:37 1 Q. And then staying on that page, in the same
09:46:40 2 column, there is another header below that italicized
09:46:44 3 one, also in italics, "3.1, corollary 2, add descriptive
09:46:48 4 evidence from insiders."
09:46:50 5 Do you see that?
09:46:51 6 A. Yes.
09:46:52 7 Q. And what does that involve?
09:46:53 8 A. It means what it says below in the paragraph
09:46:56 9 below that corollary, which is that it is helpful in
09:47:00 10 doing an econometrics analysis to interview insiders and
09:47:05 11 incorporate some of their views in your -- in your
09:47:08 12 research paper.
09:47:09 13 Q. If you look in the -- in that paragraph that's
09:47:20 14 underneath that italicized header, the very last sentence
09:47:25 15 says, "A good story can go a long way in reassuring the
09:47:29 16 reader that the estimated model is a good way of
09:47:32 17 interpreting the reality of the firm. Has the researcher
09:47:36 18 found truth?"
09:47:37 19 Do you see that?
09:47:37 20 A. Yes, I do.
09:47:39 21 Q. What does that mean?
09:47:40 22 A. It means that when you do econometric analysis,
09:47:43 23 and you're looking at data, it's always nice to have
09:47:47 24 additional analysis from the insiders to corroborate the
09:47:52 25 results that you find.

09:47:54 1 Q. And then on the next page, 615 of the document,
09:48:17 2 in the left column there is a bolded header, "Steps To
09:48:22 3 Take."
09:48:23 4 Do you see that?
09:48:23 5 A. Sure.
09:48:24 6 Q. And is that list essentially the key approach
09:48:26 7 that you would take to do an econometric -- insider
09:48:29 8 econometric study?
09:48:31 9 A. Yes. It's the list I wrote at the time.
09:48:34 10 Q. Has that changed since 2009?
09:48:38 11 A. Well, I've written more papers on this. We
09:48:40 12 might have altered the list a little bit, but it's
09:48:43 13 basically as it says. It's steps to take.
09:48:47 14 Q. In looking at this list right now, is there
09:48:49 15 anything you can see on the list that you now disagree
09:48:52 16 with?
09:48:54 17 MR. KIERNAN: Object to form.
09:49:09 18 THE WITNESS: I don't disagree with any of it.
09:49:11 19 I've written other lists that are slightly different, but
09:49:14 20 this is one possible set of practices.
09:49:16 21 BY MS. DERMODY:
09:49:16 22 Q. Okay. And then going to the right column of
09:49:23 23 the page on 615, there is a numbered paragraph 4, and it
09:49:28 24 references using census data.
09:49:30 25 Do you see that?

09:49:32 1 A. Uh-huh. Yes.

09:49:34 2 Q. Thank you. How can you use census data in your

09:49:36 3 work?

09:49:42 4 MR. KIERNAN: Object to form.

09:49:42 5 THE WITNESS: In my work? In what -- what do

09:49:45 6 you mean in my work?

09:49:46 7 BY MS. DERMODY:

09:49:46 8 Q. I meant in your insider econometric study.

09:49:50 9 A. Well, I've never used census data in my

09:49:54 10 econometrics studies, but others are beginning to do so

09:49:57 11 as data is becoming available, and I mention that in the

09:50:00 12 paragraph below, that there are some industries, such

09:50:02 13 as trucking industry, retail trade, manufacturing

09:50:05 14 industries, where you can get census data, and you look

09:50:09 15 and match it to changes in practices over time, and I try

09:50:15 16 to identify the effect of management practices on

09:50:18 17 performance.

09:50:19 18 Q. And there is also census data about technology

09:50:23 19 positions; isn't that correct?

09:50:25 20 MR. KIERNAN: Object to form.

09:50:26 21 THE WITNESS: It depends. Census is -- census

09:50:30 22 is a huge institution. I don't know what census data

09:50:33 23 you're referring to.

09:50:34 24 BY MS. DERMODY:

09:50:35 25 Q. There is labor statistics about people in

09:50:37 1 different occupations; isn't that true?

09:50:40 2 A. Census has CPS data that show employment

09:50:45 3 earnings by occupation.

09:50:46 4 Q. And that would include certain occupations in

09:50:48 5 technology, too; isn't that correct?

09:50:50 6 A. It would include those, yes.

09:50:52 7 Q. Okay.

09:51:04 8 A. But that's very different census data than what

09:51:07 9 it is I'm writing about.

09:51:08 10 Q. Okay. And how is that?

09:51:10 11 A. What I'm writing about is census data on the

09:51:13 12 firm side, which is on the production and manufacturing

09:51:16 13 side, not on the individual side.

09:51:19 14 Q. And is it your view that census data on the

09:51:22 15 occupational side is irrelevant to econometric study?

09:51:27 16 MR. KIERNAN: Object to form.

09:51:30 17 THE WITNESS: It depends on the study.

09:51:32 18 BY MS. DERMODY:

09:51:32 19 Q. Okay. Is census data, in your view, ever

09:51:36 20 useful for econometric study?

09:51:39 21 A. Well, that's a very broad statement.

09:51:42 22 Certainly, since this data is used in econometric

09:51:48 23 studies.

09:51:49 24 Q. It's not on its face unreliable in your view;

09:51:52 25 is that correct?

09:51:53 1 MR. KIERNAN: Object to form.

09:51:54 2 THE WITNESS: It depends on your testable

09:51:57 3 hypothesis and whether the data is appropriate for

09:52:01 4 testing that hypothesis.

09:52:02 5 BY MS. DERMODY:

09:52:03 6 Q. Okay. But the data itself is not something

09:52:06 7 that you shouldn't use merely because you're doing an

09:52:10 8 econometric study; is that correct?

09:52:13 9 MR. KIERNAN: Object to form.

09:52:13 10 THE WITNESS: It depends on the econometric

09:52:15 11 study.

09:52:16 12 BY MS. DERMODY:

09:52:19 13 Q. In page 616, which is the last page of this

09:52:27 14 paper before the references, on the right column, the

09:52:36 15 last paragraph, you write in the start of the paragraph,

09:52:40 16 "Ultimately, implementing insider econometrics is part

09:52:44 17 art and part science."

09:52:46 18 Do you see that?

09:52:47 19 A. Yes.

09:52:47 20 Q. What do you mean by that?

09:52:50 21 A. It means -- the science part is the

09:52:52 22 econometrics. It's the regressions that you run.

09:52:55 23 And the art is the way in which you sort of put

09:52:57 24 together the evidence so that the preponderance of

09:53:00 25 evidence tests the hypothesis. And so you have to be

09:53:04 1 somewhat artful in how you do that. There is not pure
09:53:08 2 scientific rules.

09:53:09 3 Q. And is there some art to constructing
09:53:12 4 regressions?

09:53:14 5 MR. KIERNAN: Object to form.

09:53:20 6 THE WITNESS: There is judgment. I wouldn't
09:53:21 7 say art applies to the regressions.

09:53:23 8 BY MS. DERMODY:

09:53:24 9 Q. Okay. In what sense is there judgment?

09:53:28 10 A. In estimating regressions you have to judge
09:53:31 11 what the proper functional form is to test your
09:53:34 12 hypothesis.

09:54:37 13 THE REPORTER: Exhibit 2848.

09:54:38 14 (Exhibit 2848 was marked for identification.)

09:54:38 15 BY MS. DERMODY:

09:54:39 16 Q. Dr. Shaw, do you recognize what I have placed
09:54:42 17 in front of you?

09:54:42 18 A. Yes, I do.

09:54:43 19 Q. Is this your expert report in this case?

09:54:46 20 A. Yes, it is.

09:54:47 21 Q. Can you turn to page 27 of the report.

09:55:01 22 A. Okay.

09:55:02 23 Q. Is that your signature on page 27?

09:55:03 24 A. Yes, it is.

09:55:04 25 Q. Did you sign that on June 21 or on a different

09:55:08 1 date?

09:55:08 2 A. On June 21st.

09:55:10 3 Q. Did you work with anyone else on this report?

09:55:15 4 A. In this report, I -- I wrote the report myself

09:55:20 5 and went through several versions of the report myself.

09:55:24 6 And I got feedback from counsel on some elements of the

09:55:31 7 report.

09:55:33 8 Q. Did you have any staff or students to help you?

09:55:35 9 A. No, I didn't.

09:55:40 10 Q. Did you do the actual word processing for this

09:55:43 11 report, that is the actual typing?

09:55:45 12 A. Yes, I did.

09:55:50 13 Q. If you turn to -- let's see -- Exhibit B, or

09:55:54 14 Appendix B, excuse me --

09:55:59 15 A. Okay.

09:56:00 16 Q. -- there is a list of documents on here; is

09:56:11 17 that correct?

09:56:11 18 A. That's right.

09:56:12 19 Q. And how did you select the transcripts and

09:56:15 20 depositions that you reviewed?

09:56:18 21 A. I reviewed many declarations and depositions,

09:56:24 22 and -- that were provided to me, and I reviewed them

09:56:30 23 based on an assortment of people at each company. So I

09:56:36 24 looked for people who would be CEOs, presidents, HR

09:56:42 25 professionals, and managers.

09:56:43 1 Q. And how did you select which ones you'd review?

09:56:48 2 A. That's what I thought I just answered.

09:56:57 3 Q. So did you review all of the declarations and

09:57:00 4 depositions that were given to you?

09:57:01 5 A. I reviewed -- yes, I reviewed all the

09:57:05 6 declarations. There are some depositions that I didn't

09:57:07 7 review, but I reviewed the majority.

09:57:12 8 Q. And is it your understanding these are all the

09:57:14 9 depositions in the case?

09:57:21 10 A. Listed in this appendix?

09:57:23 11 Q. Yes.

09:57:24 12 A. No. These are not all the depositions in the

09:57:26 13 case.

09:57:26 14 Q. Do you know how many depositions were taken in

09:57:28 15 this case?

09:57:29 16 A. No, I don't.

09:57:35 17 Q. Did you review for the depositions the complete

09:57:38 18 transcripts or only parts of them?

09:57:41 19 A. For the most part, I reviewed the complete

09:57:43 20 transcripts, but there are places where I skimmed them.

09:57:47 21 Q. Did you review summaries of transcripts

09:57:53 22 prepared by other people?

09:57:54 23 A. No, I didn't.

09:57:57 24 Q. Did you request to get any materials that you

09:57:59 25 did not get?

09:58:02 1 A. I requested to get materials that were relevant

09:58:05 2 to the case. I didn't -- I don't know of any materials I

09:58:07 3 did not get.

09:58:10 4 Q. I note on this list there is no mention of the

09:58:14 5 reports of Plaintiffs' expert, Dr. Edward Leamer,

09:58:20 6 correct?

09:58:21 7 A. That's right.

09:58:22 8 Q. And did you not receive those reports?

09:58:23 9 A. No, I received them.

09:58:24 10 Q. And did you not review them?

09:58:26 11 A. I read them.

09:58:29 12 Q. You didn't list them here.

09:58:31 13 A. Well, they're not relevant to my assignment.

09:58:36 14 Q. And did you review the briefs that Plaintiffs

09:58:39 15 prepared in connection with class certification?

09:58:44 16 A. I -- I read them.

09:58:45 17 Q. But you didn't list them here.

09:58:47 18 A. Again, they're not relevant to my report.

09:58:55 19 MR. KIERNAN: Kelly, if you look at paragraph

09:58:57 20 15, she lists materials that she reviewed, and I think

09:59:01 21 Appendix B is what she's citing to in her report that

09:59:04 22 she's relying on.

09:59:06 23 THE WITNESS: Right. So --

09:59:07 24 MR. KIERNAN: I just want to -- since you're

09:59:09 25 going -- focusing on Appendix B, some of the materials

09:59:13 1 that you just listed are listed in paragraph 15.

09:59:18 2 MS. DERMODY: Can you point out to me in

09:59:20 3 paragraph 15, Counsel, where it says Leamer's report

09:59:23 4 or --

09:59:24 5 MR. KIERNAN: It says "experts reports," fourth

09:59:27 6 line down.

09:59:30 7 MS. DERMODY: It's not clear from this that

09:59:32 8 we're talking about Leamer as opposed to Hallock.

09:59:35 9 MR. KIERNAN: That includes all expert reports.

09:59:39 10 BY MS. DERMODY:

09:59:39 11 Q. Is that true?

09:59:40 12 A. That's true.

09:59:50 13 Q. Did you also review the declarations Plaintiffs

09:59:54 14 submitted attaching evidence in connection with the class

09:59:57 15 certification?

09:59:58 16 A. I read all the declarations that were provided

10:00:01 17 to me.

10:00:02 18 Q. Okay. Do you recall if you read declarations

10:00:04 19 of Plaintiffs' counsel?

10:00:10 20 A. I don't know what that is.

10:00:13 21 Q. You don't list them in your Appendix B.

10:00:17 22 A. I don't know what a "declaration of Plaintiffs'

10:00:19 23 counsel" is.

10:00:21 24 Q. So when you read declarations, did you notice

10:00:25 25 the people wrote who they were and what their titles

10:32:06 1 A. Again, I haven't been asked to evaluate what
10:32:08 2 percentage of base is paid -- is tied to performance.
10:32:12 3 Q. Do you know -- do you have empirical evidence
10:32:15 4 that base salary is tied to performance at each of these
10:32:19 5 firms?
10:32:20 6 MR. KIERNAN: Object to form.
10:32:28 7 THE WITNESS: There is evidence showing
10:32:29 8 dispersion of pay, which suggests that it is associated
10:32:34 9 with individual performance differences, but the -- but
10:32:38 10 I -- I don't draw upon evidence, and I was not asked to
10:32:44 11 look at evidence to -- to document the connection between
10:32:48 12 performance and pay.
10:32:49 13 BY MS. DERMODY:
10:32:53 14 Q. So you've not reviewed any data that reflects a
10:32:56 15 connection between performance rating and base salary; is
10:33:00 16 that correct?
10:33:01 17 MR. KIERNAN: Object to form.
10:33:02 18 THE WITNESS: Between performance rating and
10:33:05 19 base salary?
10:33:06 20 BY MS. DERMODY:
10:33:07 21 Q. Yes.
10:33:07 22 A. That's correct. I haven't reviewed any data.
10:33:09 23 Q. And your opinion here that individual
10:33:11 24 performance creates a difference between employees is
10:33:15 25 related solely to dispersion of salaries across the

10:33:20 1 companies; is that correct?

10:33:22 2 MR. KIERNAN: Object to form.

10:33:24 3 THE WITNESS: And it's related to the

10:33:25 4 qualitative evidence in the case, talking about the use

10:33:29 5 of the philosophy, pay for performance, and how it was

10:33:32 6 implemented.

10:33:34 7 BY MS. DERMODY:

10:33:36 8 Q. So your opinion is that because there was a

10:33:39 9 discussion of pay for performance at the companies and

10:33:42 10 there was some variation in employee pay, that

10:33:47 11 therefore -- what?

10:33:50 12 MR. KIERNAN: Object to form.

10:33:52 13 THE WITNESS: My view is that the preponderance

10:33:53 14 of evidence, both on the qualitative side and the

10:33:58 15 quantitative side, describes a pay-for-performance

10:34:01 16 environment in each of these firms.

10:34:04 17 BY MS. DERMODY:

10:34:04 18 Q. And your view is also a pay-for-performance

10:34:07 19 system -- sorry -- that each of these companies also

10:34:09 20 followed principles of internal equity; isn't that true?

10:34:13 21 A. It depends on how you define "internal equity."

10:34:16 22 Q. Well, how do you define it?

10:34:17 23 A. Well, as I stated in my doc -- in my report,

10:34:21 24 the way I define "internal equity" is internal equity is

10:34:25 25 simply a notion that managers should consider the pay of

10:34:28 1 similarly-performing employees doing similar work when
10:34:32 2 setting an individual's pay.

10:34:33 3 Q. Okay. Under that definition, would you agree
10:34:36 4 that all of the Defendants follow principles of internal
10:34:39 5 equity?

10:34:40 6 A. For the most part --

10:34:41 7 MR. KIERNAN: Object to form.

10:34:42 8 THE WITNESS: -- they follow the concept of
10:34:43 9 internal equity.

10:34:46 10 BY MS. DERMODY:

10:34:46 11 Q. Are you familiar with the term "pay
10:34:59 12 compression"?

10:34:59 13 A. Yes.

10:35:00 14 Q. And what is that?

10:35:01 15 A. Pay compression means that the pay of the less
10:35:05 16 experienced new hire may be higher than the older
10:35:11 17 experienced employee.

10:36:18 18 Q. In your view, pay compression is not a
10:36:21 19 flattening of pay so that wages don't get out of line?

10:36:25 20 MR. KIERNAN: Object to form.

10:36:25 21 THE WITNESS: I don't know what you mean by
10:36:26 22 "flattening" or "out of line."

10:36:28 23 BY MS. DERMODY:

10:36:29 24 Q. The example you gave is pay compression means
10:36:31 25 that someone with less experience could have more pay

10:36:34 1 than an older experienced employee, right? Isn't that
10:36:38 2 what you said?

10:36:38 3 A. Yes. That's what I said.

10:36:41 4 Q. But isn't pay compression also when there is a
10:36:43 5 flattening of wages to keep wages in line with each
10:36:47 6 other?

10:36:48 7 MR. KIERNAN: Object to form.

10:36:49 8 THE WITNESS: I still don't know what you mean
10:36:50 9 by "flattening." That's not a term I use.

10:36:53 10 BY MS. DERMODY:

10:36:54 11 Q. Do you understand the idea of related pay?

10:36:58 12 A. No, I don't.

10:37:10 13 THE VIDEOGRAPHER: Could you move the paper
10:37:10 14 away from your microphone cord?

10:37:10 15 MS. DERMODY: Yes.

10:37:12 16 THE VIDEOGRAPHER: It makes a noise.

10:37:18 17 BY MS. DERMODY:

10:37:18 18 Q. What do you understand the term "compression"
10:37:19 19 to mean?

10:37:21 20 A. I just defined it.

10:37:22 21 Q. You defined "paid compression."

10:37:25 22 A. Well, I'm not thinking about tire compression.
10:37:28 23 I don't know what -- what -- what kind of compression do
10:37:31 24 you want me to define?

10:37:33 25 Q. Well, isn't "compression" a term that describes

10:37:36 1 a flattening of something?

10:37:38 2 MR. KIERNAN: Object to form.

10:37:41 3 THE WITNESS: A flattening of what? I -- I --

10:37:43 4 I don't know what you mean. Flattening with respect to

10:37:46 5 what?

10:37:46 6 BY MS. DERMODY:

10:37:47 7 Q. In the context of pay, a flattening of related

10:37:50 8 salaries.

10:37:51 9 MR. KIERNAN: Object to form.

10:37:52 10 THE WITNESS: No, I think you'd have to define

10:37:53 11 "flattening" more carefully for me to evaluate what you

10:38:00 12 mean by "flattening."

10:38:01 13 BY MS. DERMODY:

10:38:02 14 Q. You understand how the concept internal equity

10:38:04 15 can create comparisons between people doing similar work,

10:38:07 16 correct?

10:38:07 17 A. As I defined it, it is making comparisons in

10:38:11 18 pay between people who are -- who are similar-performing

10:38:15 19 employees doing similar work.

10:38:17 20 Q. Okay. And if there are employees that are

10:38:21 21 doing similar work, and one of those employees was to

10:38:25 22 get -- was to receive a salary increase, if the pay --

10:38:31 23 the pay compression was a concept, wouldn't there be a

10:38:37 24 downward impact on the pay?

10:38:42 25 MR. KIERNAN: Object to form.

10:38:43 1 THE WITNESS: A downward impact on the pay of
10:38:44 2 what?
10:38:45 3 BY MS. DERMODY:
10:38:45 4 Q. Of the employee getting a salary increase.
10:38:48 5 MR. KIERNAN: Object to form.
10:38:49 6 THE WITNESS: You have to restate your
10:38:50 7 scenario. I -- I don't understand your scenario.
10:38:53 8 BY MS. DERMODY:
10:38:54 9 Q. In your field of study, you've looked at the
10:39:35 10 effects of personnel practices on certain objectives,
10:39:39 11 like productivity; is that correct?
10:39:42 12 A. That's right.
10:39:42 13 Q. And is it fair to say that you've observed that
10:39:45 14 sometimes the effects of personnel practices aren't felt
10:39:50 15 instantaneously?
10:39:52 16 MR. KIERNAN: Object to form.
10:39:57 17 THE WITNESS: The effects of personal practices
10:40:00 18 on productivity would have a lag structure. Is that what
10:40:02 19 you're referring to?
10:40:03 20 BY MS. DERMODY:
10:40:04 21 Q. Yes.
10:40:04 22 A. Yes. There could be a lag structure.
10:40:09 23 Q. And are you familiar with the term "rigid wage
10:40:13 24 structure"?
10:40:14 25 A. I've read the term.

10:40:15 1 Q. What is your understanding of what that means?

10:40:18 2 A. Well, I -- I read the term in Dr. Leamer's

10:40:21 3 report, but I don't have a clear understanding of what

10:40:24 4 that means.

10:40:25 5 Q. What does a "rigid wage structure" mean to you?

10:40:29 6 A. There is no common definition of a "rigid wage

10:40:33 7 structure" in my field.

10:40:34 8 Q. Would you have a hypothetical example of what

10:40:37 9 you would consider a "rigid wage structure"?

10:40:40 10 MR. KIERNAN: Object to form.

10:40:45 11 THE WITNESS: I could extrapolate and speculate

10:40:49 12 based upon Dr. Leamer's report what he meant by "rigid

10:40:53 13 wage structure."

10:40:54 14 BY MS. DERMODY:

10:40:54 15 Q. What do you think it means based on that

10:40:57 16 extrapolation?

10:40:58 17 A. My speculation on what "rigid wage structure"

10:41:01 18 means is that there are fixed wages between different job

10:41:04 19 categories.

10:41:04 20 Q. Is that different than salary ranges?

10:41:07 21 A. Completely different. Salary ranges are not

10:41:10 22 rigid wage structure.

10:41:12 23 Q. Okay. So the -- does the existence of salary

10:41:15 24 range -- excuse me.

10:41:17 25 Is the existence of a salary range incompatible

10:41:22 1 with the rigid wage structure in your view?

10:41:26 2 MR. KIERNAN: Object to form.

10:41:27 3 THE WITNESS: A salary range -- again, I

10:41:29 4 haven't defined a rigid wage structure, and I'm not sure

10:41:32 5 it can be defined. So it would be difficult for me to

10:41:34 6 say whether the existence of a salary range is consistent

10:41:38 7 or inconsistent with it.

10:41:41 8 BY MS. DERMODY:

10:42:02 9 Q. Is the existence of a salary range consistent

10:42:05 10 with a formal pay structure?

10:42:08 11 A. Yes. Formalized pay systems may well have

10:42:10 12 salary ranges as a part of their formalized systems.

10:42:14 13 Q. Okay. And are salary ranges consistent with a

10:42:19 14 pay-for-performance system?

10:42:22 15 A. Salary ranges are consistent with pay for

10:42:24 16 performance when they serve as guidelines for managers

10:42:28 17 when they're making pay decisions.

10:42:32 18 Q. And if managers pay 100 percent of the time

10:42:40 19 within salary ranges, does that lead to any conclusion

10:42:43 20 for you about whether there is a formal pay system?

10:42:48 21 MR. KIERNAN: Object to form.

10:42:49 22 THE WITNESS: I don't know what you mean by pay

10:42:50 23 100 percent of the time in salary ranges.

10:42:54 24 MS. DERMODY: Let me strike that.

10:43:01 25 Q. Does it matter to your analysis how frequently

10:43:05 1 managers pay within a salary range to determine whether
10:43:08 2 there is manager discretion at work in a
10:43:12 3 pay-for-performance system?

10:43:13 4 A. No, it does not matter.

10:43:15 5 Q. So even if it's a hundred percent of the time,
10:43:18 6 it doesn't change your view.

10:43:21 7 A. It could still -- managers may well pay within
10:43:24 8 the salary range as when the salary range is a guideline,
10:43:28 9 but they could still be using pay for performance.

10:43:31 10 Q. If one were to consider a series of objective
10:43:57 11 factors, a series of objective characteristics of
10:44:01 12 employees to compare similar employees -- do you follow
10:44:05 13 me so far?

10:44:06 14 A. Perhaps.

10:44:07 15 Q. Okay. And if you were looking at things like
10:44:09 16 title, tenure, age, gender, and location --

10:44:15 17 A. Okay.

10:44:16 18 Q. -- and that accounted for 90 percent of the
10:44:20 19 wages that employees were paid, leaving only 10 percent
10:44:24 20 that was different, would that be an example of a
10:44:29 21 pay-for-performance system or something else?

10:44:32 22 MR. KIERNAN: Object to form.

10:44:33 23 THE WITNESS: It can still be completely
10:44:35 24 consistent with a pay-for-performance system.

25 //

10:44:38 1 BY MS. DERMODY:

10:44:44 2 Q. Is there some level of pay that is inconsistent

10:44:50 3 with a pay-for-performance system, some study that you

10:44:53 4 would do, other than having fixed wages?

10:44:58 5 MR. KIERNAN: Object to form.

10:44:59 6 THE WITNESS: Some study I would do? I'm not

10:45:01 7 sure I follow.

10:45:02 8 BY MS. DERMODY:

10:45:02 9 Q. Is there -- is there any type of firm you can

10:45:05 10 think of that doesn't have a pay-for-performance system?

10:45:07 11 A. Certainly there are firms without a

10:45:09 12 pay-for-performance system.

10:45:11 13 Q. Okay. What are they?

10:45:12 14 A. An example would be teachers, education. They

10:45:16 15 would use a salary schedule which -- in which your tenure

10:45:19 16 and your education would determine quite -- quite closely

10:45:26 17 what it is your pay should be.

10:45:34 18 Q. Any others?

10:45:35 19 A. Well, perhaps government workers, firefighters.

10:45:38 20 Traditional firms may well have a system that's not a

10:45:41 21 pay-for-performance system.

10:46:09 22 Q. You base a lot of your opinion on the fact

10:46:11 23 managers have some discretion around pay; is that

10:46:13 24 correct?

10:46:13 25 A. Yes, I believe managers have discretion.

10:46:16 1 Q. And is there a level of -- is there a
10:46:22 2 limitation on that discretion where you would no longer
10:46:25 3 think that that discretion mattered in this case?

10:46:28 4 MR. KIERNAN: Object to form.

10:46:34 5 THE WITNESS: I don't know how -- I -- I can't
10:46:36 6 imagine what you're referring to.

10:46:38 7 BY MS. DERMODY:

10:46:38 8 Q. Okay. Is there any empirical study that you
10:46:41 9 would do to test your hypothesis that managers exercise
10:46:44 10 substantial discretion?

10:46:46 11 MR. KIERNAN: Object to form.

10:47:00 12 THE WITNESS: It would be a difficult -- it
10:47:02 13 would be a difficult test to take -- to make.

10:47:07 14 BY MS. DERMODY:

10:47:07 15 Q. Okay. Can you come up with any idea?

10:47:09 16 A. I haven't been asked to do that, so I would
10:47:11 17 have to think about it in more depth.

10:47:13 18 Q. Okay. As a regular part of your work, you
10:47:17 19 developed those types of tests; isn't that right?

10:47:19 20 A. I develop tests of the effect of management
10:47:22 21 practices on performance, but I don't develop tests of
10:47:26 22 the effects of management discretion on pay or -- I'm not
10:47:31 23 even sure what you're asking.

10:47:32 24 Q. Yes. You expressed that correctly.

10:47:36 25 A. Okay.

10:47:37 1 Q. Is there any type of data that you know you'd
10:47:40 2 want to look at?

10:47:41 3 A. I'd really have to think about the question in
10:47:44 4 more depth to identify a dataset to really tease out
10:47:47 5 those effects.

10:47:49 6 Q. Okay. If you sat here for five minutes, would
10:47:51 7 you be able to come up with an idea, or no?

10:47:54 8 A. Probably it -- I'd really have to think about
10:47:56 9 the nature of the data that the firm would make available
10:47:59 10 in order to test that, and that would be a difficult
10:48:03 11 task.

10:48:04 12 Q. Okay. And you haven't done that here, correct?

10:48:07 13 A. I haven't tested whether discretion -- I
10:48:10 14 haven't tested the extent of -- I'm losing track of your
10:48:14 15 question. I haven't tested the extent of the impact of
10:48:17 16 management's discretion.

10:48:19 17 Q. When you have constructed regressions looking
10:48:34 18 at various employment practices of firms, have you on
10:48:42 19 occasion considered such factors as tenure, age, gender,
10:48:48 20 title, that sort of thing?

10:48:51 21 MR. KIERNAN: Object to form.

10:48:51 22 THE WITNESS: In wage regressions? Is that
10:48:53 23 your question?

10:48:54 24 BY MS. DERMODY:

10:48:54 25 Q. Sure.

10:48:55 1 A. You're asking me -- would you repeat it?

10:48:57 2 Q. Yes.

10:48:57 3 A. What are you asking?

10:48:58 4 Q. Yes. When you have constructed regressions

10:49:01 5 looking at employment practices at firms, have you on

10:49:06 6 occasion considered such factors as tenure, age, gender,

10:49:10 7 title, those sorts of things?

10:49:12 8 A. You'll have to be more clear about what the

10:49:14 9 regression was doing for me to say whether I put in

10:49:18 10 tenure or age.

10:49:19 11 Q. So in your "Reaching For The Stars" article, do

10:49:21 12 you recall doing a study that actually looked at tenure

10:49:25 13 and age?

10:49:26 14 A. We had -- in "Reaching For The Stars," we had

10:49:29 15 data on age. I don't recall if we had data on tenure.

10:49:33 16 I'd have to look.

10:50:07 17 Q. We've talked a little bit already about

10:50:09 18 internal equity.

10:50:10 19 Do you recall that?

10:50:11 20 A. Yes.

10:50:13 21 Q. And if you turn to paragraph 43 of your report,

10:50:16 22 it's on page 15 --

10:50:24 23 A. Yes.

10:50:24 24 Q. -- do you see that? You'll note that in the

10:50:26 25 middle of that paragraph you cite to footnote 16 which is

10:50:29 1 the Baron and Kreps treatise, "Strategic Human
10:50:34 2 Resources."

10:50:35 3 Do you see that?

10:50:36 4 A. Right.

10:51:07 5 THE REPORTER: Exhibit 2850.

10:51:08 6 (Exhibit 2850 was marked for identification.)

10:51:27 7 BY MS. DERMODY:

10:51:28 8 Q. Do you recognize this document marked as
10:51:29 9 Exhibit 2850?

10:51:30 10 A. Yes, I do.

10:51:31 11 Q. What is this?

10:51:32 12 A. It looks like a chapter from the Baron and
10:51:34 13 Kreps textbook.

10:51:36 14 Q. And this is a chapter that you cited in
10:51:39 15 footnote 16?

10:51:43 16 A. I'd have to match the pages as -- I -- I don't
10:51:51 17 know if it's the chapter. I'd have to look for the part
10:51:53 18 on -- on different measures of justice. I assume that
10:51:56 19 that's what you found.

10:51:57 20 Q. Yes.

10:51:58 21 A. Oh, here it is.

10:51:58 22 Q. You cite 107.

10:52:00 23 A. Yeah, here it is. 107. Here it is. Yeah.

10:52:04 24 Q. Now, in paragraph 43, you state there are two
10:52:07 25 types of internal equity, distributed justice, where you

10:52:11 1 claim is when all employees are paid the same wage; and
10:52:15 2 procedural justice, when pay is perceived to be fair
10:52:18 3 because the procedures for setting pay are fair.
10:52:21 4 Do you see that --
10:52:22 5 A. Yes.
10:52:22 6 Q. -- in your report?
10:52:23 7 A. That's right.
10:52:24 8 Q. All right. And you cite Baron and Kreps for
10:52:26 9 that proposition; is that correct?
10:52:28 10 A. Yes.
10:52:32 11 Q. And then you quote them on page 16 -- I'm
10:52:37 12 sorry. And then you in this -- sorry. In paragraph
10:52:40 13 43 -- strike that.
10:52:42 14 In paragraph 43, your sentence starting in the
10:52:46 15 second definition labeled "Procedural Justice: Pay is
10:52:49 16 perceived to be fair when the procedures for setting pay
10:52:51 17 are fair."
10:52:52 18 Do you see that?
10:52:53 19 A. Yes.
10:52:53 20 Q. And you cite Baron and Kreps, and you have a
10:52:55 21 quote there for that sentence.
10:52:57 22 Do you see that?
10:52:58 23 A. Okay.
10:52:58 24 Q. And that's page 107.
10:53:00 25 A. Right.

10:53:01 1 Q. If you turn to 107, you'll note that what
10:53:07 2 you've quoted is actually not from "Procedural Justice,"
10:53:10 3 but from "Distributive Justice."
10:53:12 4 Do you see that?
10:53:38 5 A. Well, it's referring to this -- a third justice
10:53:41 6 principle, according to the equity principle.
10:53:52 7 Okay. No, I -- I don't see that it refers to
10:53:53 8 distributive justice.
10:53:55 9 Q. Right, even though it's -- I'm sorry. It's
10:53:57 10 under --
10:53:58 11 A. It's under "Distributive Justice."
10:53:59 12 Q. So there is a heading on 107, "Distributive
10:54:02 13 Justice."
10:54:03 14 Do you see that?
10:54:03 15 A. Uh-huh. I see that, yes.
10:54:04 16 Q. If you turn to 108, do you see there is a
10:54:07 17 heading for "Procedural Justice"?
10:54:09 18 A. Yes.
10:54:09 19 Q. So would you agree that the quote you have put
10:54:12 20 in footnote 16 comes from "Distributive Justice," not
10:54:15 21 "Procedural Justice" from Baron/Kreps; is that correct?
10:54:22 22 MR. KIERNAN: Object to form.
10:54:24 23 THE WITNESS: Yes. It looks like it's from the
10:54:27 24 section "Distributive Justice."
25 //

10:54:29 1 BY MS. DERMODY:

10:54:29 2 Q. Okay. So the cite in paragraph 43 to this

10:54:35 3 text, which is a cite about procedural justice, is

10:54:40 4 inaccurate; is that correct?

10:54:43 5 MR. KIERNAN: Object to form.

10:54:49 6 THE WITNESS: Well, it's under the setting of

10:54:51 7 distributive justice. So is it inaccurate? It looks

10:55:05 8 like it should be referring to distributive justice, but

10:55:08 9 I'd have to read the whole thing.

10:55:40 10 So what's the question?

10:55:40 11 BY MS. DERMODY:

10:55:41 12 Q. So the question was, this citation at footnote

10:55:43 13 16 to the sentence about procedural justice is

10:55:45 14 inaccurate; isn't that correct?

10:55:47 15 MR. KIERNAN: Object to form.

10:55:52 16 THE WITNESS: It looks like it should be

10:55:53 17 referring to distributive justice.

10:55:55 18 BY MS. DERMODY:

10:55:55 19 Q. Okay. And let's go back to paragraph 43.

10:56:02 20 So you relied on Baron and Kreps for this

10:56:04 21 analysis of the difference between distributive justice

10:56:07 22 and procedural justice; is that correct?

10:56:10 23 A. And my own knowledge of the area.

10:56:12 24 Q. Okay. And you say in paragraph 43, "The

10:56:17 25 distributive justice is where pay is perceived fair

10:56:21 1 because everyone is paid the same, like in a unionized
10:56:24 2 setting"; is that correct?
10:56:29 3 A. That's correct. Yes.
10:56:39 4 Q. And if you go to page 106 of Baron and Kreps,
10:56:49 5 under "Distributive and Procedural Justice," do you see
10:56:52 6 that heading?
10:56:53 7 A. Uh-huh.
10:56:53 8 Q. And you'll see at the very end there is a
10:56:58 9 definition that Baron and Kreps gives to distributive
10:57:01 10 versus procedural justice.
10:57:03 11 Do you see that?
10:57:04 12 A. You mean the -- what's in italics?
10:57:07 13 Q. Yes.
10:57:07 14 A. Yes.
10:57:08 15 Q. And under the Baron and Kreps definition there,
10:57:11 16 where it says, "Distributive justice is how people did
10:57:14 17 relative to others, and procedural is the process by
10:57:17 18 which the outcome was achieved," do you see that?
10:57:20 19 A. Yes, I do.
10:57:21 20 Q. And that's inconsistent with the idea that
10:57:24 21 distributive justice only means pay is the same for
10:57:27 22 everyone; is that correct?
10:57:29 23 MR. KIERNAN: Object to form.
10:57:30 24 THE WITNESS: Distributive justice means pay is
10:57:31 25 the same for everybody looking at people, comparing

11:08:51 1 ever gotten in trouble because you have misstated your
11:08:54 2 research?

11:08:55 3 A. No, I haven't.

11:08:57 4 Q. Okay. Have you ever been in trouble for
11:08:58 5 exaggerating credentials?

11:09:01 6 MR. KIERNAN: Object to form.

11:09:02 7 THE WITNESS: No, I haven't.

11:09:04 8 MS. DERMODY: Okay. Let's take a quick break.

11:09:06 9 THE VIDEOGRAPHER: Okay. This is the end of
11:09:07 10 Video No. 1. We're off the record at 11:09.

11:09:09 11 (Recess was taken.)

11:28:20 12 THE VIDEOGRAPHER: We are now on the record at
11:28:21 13 11:28. This is the beginning of Video No. 2.

11:28:27 14 BY MS. DERMODY:

11:28:28 15 Q. So, Dr. Shaw, what did you do to investigate
11:28:30 16 the amount of discretions -- discretion that managers had
11:28:34 17 at Defendant firms here?

11:28:37 18 A. I read an extensive number of depositions that
11:28:40 19 discussed managerial discretion in setting pay.

11:28:44 20 Q. Did you review any of the guidelines for
11:28:47 21 discretion?

11:28:48 22 A. What do you refer to with "guidelines"?

11:28:51 23 Q. Did you do a systematic study to see if there
11:28:54 24 were guidelines of managerial discretion?

11:28:57 25 MR. KIERNAN: Object to form.

11:28:58 1 THE WITNESS: Guidelines given by whom.

11:28:59 2 BY MS. DERMODY:

11:29:00 3 Q. To firms, managers.

11:29:01 4 A. Managers do -- yes. Firms do provide

11:29:04 5 guidelines in determining pay.

11:29:05 6 Q. Did you do any systematic study for any of the

11:29:09 7 firms as to what guidelines had existed in the time

11:29:13 8 periods studied in this case?

11:29:14 9 A. What do you mean by a --

11:29:15 10 MR. KIERNAN: Object to form.

11:29:16 11 THE WITNESS: -- "systematic study"?

11:29:18 12 BY MS. DERMODY:

11:29:18 13 Q. Did you request to see all guidelines limiting

11:29:20 14 discretion or governing discretion of managers?

11:29:24 15 A. From the firms?

11:29:25 16 Q. Yes.

11:29:25 17 A. No, I did not request to see guidelines from

11:29:27 18 the firms.

11:29:29 19 Q. Did you do any systematic review of any of the

11:29:32 20 oversight mechanisms for manager discretion?

11:29:35 21 MR. KIERNAN: Object to form.

11:29:37 22 THE WITNESS: I read many depositions that

11:29:40 23 described managerial discretion and the guidelines that

11:29:44 24 were given to managers in making pay determinations.

25 //

11:29:48 1 BY MS. DERMODY:

11:29:49 2 Q. Did you request to see whether there were

11:29:52 3 oversight mechanisms that existed at any of the firms?

11:29:55 4 A. "Oversight mechanisms" meaning whether managers

11:29:59 5 were doing what?

11:30:00 6 Q. Whether there was sign-off on manager

11:30:04 7 decisions.

11:30:05 8 MR. KIERNAN: Object to form.

11:30:06 9 THE WITNESS: Sign-off by human resources?

11:30:09 10 What do you mean by "sign-off"?

11:30:10 11 BY MS. DERMODY:

11:30:10 12 Q. Yes, anyone outside the manager himself or

11:30:14 13 herself.

11:30:15 14 A. I'm not sure I'm following your line of

11:30:17 15 questioning.

11:30:17 16 Q. Did you request to see whether there were

11:30:20 17 oversight mechanisms at any of the firms to govern the

11:30:24 18 discretion exercised by managers, by people above them in

11:30:28 19 the line of command?

11:30:29 20 A. No, I didn't --

11:30:30 21 MR. KIERNAN: Object to form.

11:30:31 22 THE WITNESS: -- request to see any documents.

11:30:33 23 BY MS. DERMODY:

11:30:33 24 Q. Okay. Did you study at what level managers at

11:30:38 25 any of the companies had authority to make pay decisions

11:30:41 1 without review by others in the company?

11:30:45 2 A. The company depositions discussed managerial

11:30:48 3 authority in making decisions, and in some there were

11:30:51 4 references to compensation committees that would check

11:30:56 5 management decisions. But I couldn't describe that for

11:31:00 6 every Defendant.

11:31:01 7 Q. Did you make an attempt to study whether

11:31:04 8 oversight existed to check manager discretion at each

11:31:09 9 company?

11:31:09 10 MR. KIERNAN: Object to form.

11:31:10 11 THE WITNESS: I was just following the analysis

11:31:11 12 that Kevin Hallock did and -- and -- and ascertaining

11:31:17 13 whether there was a -- whether there was spillover from

11:31:24 14 impacting -- potentially allegedly impacted employees to

11:31:28 15 all or all others, and in my assessment after reading

11:31:32 16 depositions I found that there was extensive managerial

11:31:35 17 discretion in setting pay that would limit that

11:31:37 18 spillover.

11:31:40 19 MS. DERMODY: Move to strike the answer as

11:31:42 20 non-responsive.

11:31:43 21 Q. If you could please answer the question I just

11:31:45 22 asked, which is, did you make an attempt to study whether

11:31:48 23 company oversight -- whether at any company there was

11:31:50 24 oversight at the manager's discretion on pay decisions.

11:31:54 25 A. What do you mean by "study"?

11:31:56 1 MR. KIERNAN: Object to form.

11:31:56 2 BY MS. DERMODY:

11:31:56 3 Q. Did you systematically try to review all the

11:31:59 4 information that existed at the companies about what

11:32:02 5 oversight exists to govern manager discretion?

11:32:07 6 A. I reviewed the information I had. I didn't

11:32:09 7 return to the companies and ask them for more

11:32:12 8 information.

11:32:13 9 Q. And Dr. Hallock did not study manager

11:32:16 10 discretion, did he?

11:32:19 11 MR. KIERNAN: Object to form.

11:32:22 12 THE WITNESS: Dr. Hallock described performance

11:32:25 13 pay briefly, but he didn't discuss or describe the study

11:32:30 14 of managerial discretion.

11:32:36 15 MS. DERMODY: Okay. Let me see that.

11:32:51 16 Q. If you could turn to Exhibit 2848, which is

11:32:55 17 your report in this case, Dr. Shaw, and go to Appendix

11:32:58 18 E1.

11:32:59 19 A. Sure.

11:33:06 20 Q. You'll see on E1 there aren't actually page

11:33:09 21 numbers that follow, but if you look in the left column

11:33:11 22 that says "Employer."

11:33:14 23 A. Right.

11:33:14 24 Q. And if you can do me a favor and turn to

11:33:16 25 "Intel" as the employer.

11:33:19 1 A. Yes.

11:33:20 2 Q. As an example.

11:33:21 3 First, can you help me understand this to be

11:33:23 4 reflecting. We'll take the very first line, "Intel -

11:33:26 5 Analog Engineer 10."

11:33:30 6 A. Okay. So this is a -- this "Analog Engineer

11:33:33 7 10" is a job title of a group of people at Intel.

11:33:40 8 Q. And under the column for "Manager" --

11:33:42 9 "Managers," it says, "8."

11:33:45 10 Do you see that?

11:33:45 11 A. Yes, that's right.

11:33:47 12 Q. Does that indicate there are eight managers

11:33:49 13 that held that title?

11:33:51 14 A. No. That indicates eight managers supervised

11:33:54 15 people who held that title.

11:33:56 16 Q. And do you know what managers supervised that

11:33:58 17 title?

11:33:59 18 A. I don't know per se.

11:34:02 19 Q. Okay. Do you know what authority the managers

11:34:05 20 who supervised that title had to make pay decisions

11:34:08 21 without supervision?

11:34:09 22 A. I know that firms like Intel gave their

11:34:12 23 manage -- in depositions stated their managers had the

11:34:16 24 authority to make pay decisions.

11:34:17 25 Q. Do you have a specific reference to evidence

11:34:21 1 that the managers for "Analog Engineer 10" had the
11:34:25 2 authority to make pay decisions without review?

11:34:28 3 MR. KIERNAN: Object to form.

11:34:29 4 THE WITNESS: I don't have that information.

11:34:30 5 BY MS. DERMODY:

11:34:30 6 Q. Okay. Let's go to the next page of Intel. And
11:34:36 7 let's go to the title "Construction Project Manager."

11:34:44 8 Do you see that?

11:34:45 9 A. Yes.

11:34:47 10 Q. And it indicates in the next column under
11:34:49 11 "Manager" that there are four.

11:34:51 12 Do you see that?

11:34:52 13 A. Yes.

11:34:52 14 Q. Does that indicate there were four managers of
11:34:55 15 those employees or that there were four in that title?

11:34:59 16 A. Four managers of those employees.

11:35:01 17 Q. Okay.

11:35:01 18 A. Well, the -- the employees themselves are
11:35:04 19 managers. But, yes, there are four managers of those
11:35:07 20 employees.

11:35:07 21 Q. Okay. So for this title, which you indicate
11:35:11 22 these employees are managers, do you have any authority
11:35:15 23 showing that these managers were able to make pay
11:35:18 24 decisions without review?

11:35:20 25 MR. KIERNAN: Hang on. Object to form.

11:35:21 1 THE WITNESS: I would have to look up the Intel
11:35:23 2 information specifically. There are seven Defendants
11:35:26 3 here, and I can't tell you exactly what sort of review
11:35:29 4 system Intel has for these particular managers.

11:35:31 5 BY MS. DERMODY:

11:35:32 6 Q. Do you have anything in your report that
11:35:33 7 indicates that "Intel Construction Project Manager 10"
11:35:37 8 had the authority to make pay decisions without review?

11:35:40 9 A. What I do have is an overall analysis that
11:35:45 10 managers were given discretion in making pay decisions.

11:35:47 11 Q. And you don't -- you didn't do any study to see
11:35:50 12 how that discretion was limited; is that correct?

11:35:57 13 MR. KIERNAN: Object to form.

11:35:57 14 THE WITNESS: I don't know whether there were
11:35:58 15 limitations on managers' discretion here, but managers --
11:36:00 16 this is a pay-for-performance environment where managers
11:36:04 17 are told they are supposed to pay for performance, and
11:36:06 18 therefore they would be analyzing on a subjective basis
11:36:11 19 the work of "Construction Project Manager 10" and
11:36:15 20 assigning pay based upon the capabilities of that person.

11:36:18 21 BY MS. DERMODY:

11:36:19 22 Q. And you don't know whether when they made those
11:36:21 23 decisions they were reviewed by anyone, one person, a
11:36:24 24 hundred people, a thousand people; is that correct?

11:36:27 25 MR. KIERNAN: Object to form.

11:36:28 1 THE WITNESS: I don't know whether they were
11:36:29 2 reviewed. I didn't check to see whether they were
11:36:31 3 reviewed, but I do know that in a pay-for-performance
11:36:34 4 system there could be some reviews, but often they state
11:36:37 5 that managers have complete discretion.

11:36:42 6 BY MS. DERMODY:

11:36:50 7 Q. Do you recall seeing any evidence in this case
11:36:52 8 in writing in a document to managers advising them they
11:37:01 9 had complete discretion to make all decisions without
11:37:03 10 review?

11:37:04 11 A. I don't recall the word "complete discretion,"
11:37:06 12 but certainly I heard -- I saw reference repeatedly to
11:37:11 13 managers having discretion in making their assessments of
11:37:15 14 performance in pay.

11:37:16 15 Q. And that was references made in deposition
11:37:19 16 testimony; is that correct, Ms. Shaw?

11:37:21 17 A. That's right.

11:37:36 18 Q. You have written a bit about talent sorting; is
11:37:40 19 that correct?

11:37:40 20 A. Talent sorting?

11:37:41 21 Q. Yes.

11:37:43 22 A. It depends on what you mean. For the -- which
11:37:48 23 paper do you have in mind?

11:37:50 24 Q. Talent sorting and skill complementarity among
11:37:54 25 software engineers.

11:37:56 1 A. I'd have to look at that.

11:37:58 2 Q. Okay. I'm just going to pass you this so you

11:38:00 3 can see what I'm referencing. I wasn't intending to add

11:38:03 4 to the paper for the court reporter.

11:38:07 5 A. Oh, yes.

11:38:13 6 MR. TUBACH: Kelly, sorry, can you read into

11:38:15 7 the record what the document is.

11:38:17 8 MS. DERMODY: Sure. It's "Talent Sorting and

11:38:18 9 Skill Complementarity Among Software Engineers, December

11:38:20 10 2006." Kathryn Shaw is one of the authors.

11:38:26 11 Q. Is that correct?

11:38:27 12 A. That's right.

11:38:28 13 Q. Okay. And would you consider the seven

11:38:31 14 Defendant firms in this case to be in a top-tier of

11:38:35 15 technology firms in terms of their talent?

11:38:38 16 MR. KIERNAN: Object to form.

11:38:40 17 THE WITNESS: I'd have to define "top-tier,"

11:38:42 18 and I don't know if I -- in this paper I define

11:38:44 19 "top-tier." Perhaps I did, but I don't remember. This

11:38:47 20 is a paper that was never published.

11:38:49 21 BY MS. DERMODY:

11:39:12 22 Q. Do you understand the concept of higher quality

11:39:14 23 firms?

11:39:15 24 A. No, I don't.

11:39:18 25 Q. If you turn to page 3 --

12:04:35 1 THE WITNESS: In this particular study, we were
12:04:38 2 studying a particular measure of productivity and a
12:04:40 3 particular measure of HR practices that was relevant to
12:04:43 4 the study.

12:04:44 5 BY MS. DERMODY:

12:04:44 6 Q. And you weren't --

12:04:45 7 A. But that is not relevant to this study here
12:04:48 8 which is studying a very different set of firms.

12:04:50 9 Q. And going back to those studies, you weren't
12:04:52 10 studying just individuals, you were studying what was
12:04:57 11 happening on a company level; is that correct?

12:04:58 12 A. No, not a company level, a mill level.

12:05:02 13 Q. Okay. A mill level.

12:05:03 14 So many employees; is that correct?

12:05:05 15 A. Yes, many employees.

12:05:22 16 Q. When you drew the conclusions that certain
12:05:23 17 practices resulted in negative productivity, did you do a
12:05:28 18 study of performance rating verses productivity?

12:05:35 19 MR. KIERNAN: Object to form.

12:05:36 20 THE WITNESS: I -- I didn't -- you
12:05:37 21 mischaracterized the study. I didn't state that certain
12:05:39 22 practices had negative productivity.

12:05:41 23 BY MS. DERMODY:

12:05:42 24 Q. I'm sorry. Certain practices resulted in
12:05:45 25 negative productivity.

12:05:46 1 A. I didn't state that. Certain practices have
12:05:49 2 lower productivity than other practices.

12:05:51 3 Q. Okay. And when you were reviewing the
12:05:55 4 different results in terms of productivity, some have
12:05:58 5 lower productivity, some have higher productivity, did
12:06:02 6 you look at performance ratings by individual managers as
12:06:05 7 a feature of whether or not the HR system had higher or
12:06:11 8 lower productivity?

12:06:14 9 A. Did I look at what?

12:06:15 10 Q. Performance ratings.

12:06:17 11 A. Of managers?

12:06:18 12 Q. Yes.

12:06:20 13 A. Performance ratings --

12:06:21 14 Q. That managers made of employees.

12:06:23 15 A. Made of employees.

12:06:24 16 MR. KIERNAN: Object to form.

12:06:25 17 THE WITNESS: No. This data was no specific
12:06:27 18 data for the steel industry. Management ratings of
12:06:32 19 individual employees was not relevant to performance.
12:06:35 20 (Exhibit 2854 was marked for identification.)

12:06:35 21 BY MS. DERMODY:

12:06:35 22 Q. Okay. Dr. Shaw, the exhibit marked as
12:07:30 23 Exhibit 2854 appears to be another article.

12:07:34 24 Do you recognize this?

12:07:35 25 A. Yes.

12:07:35 1 Q. What is this?

12:07:36 2 A. An article entitled, "Reaching For The Stars."

12:07:39 3 Q. And this is an article that you wrote in August

12:07:42 4 of 2006; is that correct?

12:07:45 5 A. Yes, that's right.

12:07:59 6 Q. And if you could turn to page 6 of the

12:08:07 7 document, towards the bottom there is a paragraph that

12:08:17 8 starts "Second."

12:08:18 9 Q. Do you see that?

12:08:18 10 A. Uh-huh.

12:08:19 11 Q. And indicates the pay of software workers rises

12:08:22 12 markedly with tenure.

12:08:24 13 Q. Do you see that?

12:08:25 14 A. Yes.

12:08:33 15 Q. And if you look at those documents, does this

12:08:36 16 refresh your recollection about a subject we talked about

12:08:38 17 earlier, which is whether you had ever used tenure --

12:08:41 18 A. It does.

12:08:42 19 Q. -- as a study? And having had your memory

12:08:45 20 refreshed, is it your testimony that you have used tenure

12:08:48 21 in the software industry?

12:08:49 22 A. Yes, tenure is used in this dataset.

12:08:52 23 Q. Okay. And if you could go to page 13 of the

12:09:00 24 document --

12:09:01 25 A. Okay.

12:09:01 1 Q. -- at the top it says, "We test the hypotheses
12:09:17 2 of our model by focusing on the prepackaged software
12:09:20 3 industry, which corresponds to the four digit SIC," and
12:09:23 4 it has some numbers there.

12:09:25 5 Do you see that?

12:09:26 6 A. Yes.

12:09:26 7 Q. What is the "SIC"?

12:09:28 8 A. The SIC Code is the Standard Industrial
12:09:30 9 Classification Code, and this refers to prepackaged
12:09:34 10 software.

12:09:34 11 Q. And where does that classification code come
12:09:36 12 from?

12:09:38 13 A. I guess it's a census code. I've used it so
12:09:42 14 much, I don't recall.

12:09:43 15 Q. So this is census data you're using; is that
12:09:46 16 correct?

12:09:46 17 A. No, that's not correct. It is not census data.

12:09:50 18 Q. Okay. Tell me the way in which you use this
12:09:52 19 code in this study.

12:09:53 20 A. We looked for people in -- who work in the
12:09:57 21 prepackaged software industry, and we used the code as
12:10:00 22 the industry to designate how we found those people.

12:10:03 23 Q. And you found those people by looking at the
12:10:05 24 data that was collected; is that correct?

12:10:10 25 MR. KIERNAN: Object to form.

12:10:11 1 THE WITNESS: I don't know what you mean by
12:10:13 2 looking at the data that was collected. We had a
12:10:16 3 dataset, and we looked for people who worked in the
12:10:18 4 software industry.

12:10:19 5 BY MS. DERMODY:

12:10:19 6 Q. Where did the dataset come from?

12:10:21 7 A. The dataset was data that we obtained by
12:10:24 8 working for -- with unemployment compensation datasets
12:10:29 9 from various states. It was housed at the census center,
12:10:33 10 but it's not census data.

12:10:35 11 Q. Okay. So it was housed there. You just don't
12:10:37 12 call it census data; is that correct?

12:10:40 13 A. It's not census data.

12:10:43 14 Q. So in the middle is paragraph at page 13, where
12:10:46 15 it references the census bureau --

12:10:49 16 A. That's a different dataset.

12:10:50 17 Q. And what is that dataset?

12:10:52 18 A. That's a dataset on the information, as it says
12:10:55 19 there, on firms that produce software. The dataset that
12:10:58 20 I'm referring to above and in the majority of the paper
12:11:03 21 is a different dataset. There are two different datasets
12:11:07 22 that are merged here.

12:11:08 23 Q. Okay. And you use both types of datasets in
12:11:11 24 the study; is that correct?

12:11:12 25 A. Yes. And you can see that on the paper where

12:11:15 1 one says dataset on software workers and establishments.

12:11:19 2 And so we're talking about one dataset called LEHD and

12:11:23 3 another dataset, which is the census dataset.

12:11:26 4 Q. Okay. And using the census bureau dataset, how

12:11:30 5 did you identify the software employees that you were

12:11:34 6 looking for?

12:11:35 7 A. We don't identify software employees in the

12:11:38 8 census data. The census data is the data on firms, not

12:11:41 9 employees.

12:11:42 10 Q. Okay. And as stated below, on that same page,

12:11:48 11 the LEHD data --

12:11:51 12 A. Right.

12:11:51 13 Q. -- that's data you say comes -- that is

12:11:54 14 collected by the States and is stored at the census

12:11:58 15 bureau?

12:11:59 16 A. That's right.

12:12:01 17 Q. And that data, as indicated, has information on

12:12:05 18 worker date of birth; is that correct?

12:12:07 19 A. Yes, apparently.

12:12:09 20 Q. Which is age, race, and sex; is that correct?

12:12:13 21 A. I'd have to refresh my memory. This is an old

12:12:16 22 paper now. So if that's what it says, that's correct.

12:12:19 23 Q. Sure, on the bottom of 13, if that helps.

12:12:22 24 A. Okay.

12:12:22 25 Q. The very last words of 13.

12:12:27 1 A. Okay. Yeah. Okay.

12:12:28 2 Date of birth, race and sex. Okay.

12:12:30 3 Q. And then on page 14, at the bottom of that

12:12:32 4 page, the paragraph that starts, "Our basic universe of

12:12:36 5 data workers," do you see that?

12:12:37 6 A. Yes, I do.

12:12:38 7 Q. It talks about studying 83,497 employment

12:12:45 8 spells. Do you see that?

12:12:47 9 A. Right.

12:12:48 10 Q. What does that mean?

12:12:49 11 A. An employment spell is the time you enter

12:12:52 12 employment with a firm until the time you end employment,

12:12:54 13 or also it could be from the time we start -- start

12:12:58 14 observing the person until the time we stop observing

12:13:02 15 them, even though their employment spell hasn't ended or

12:13:06 16 begun.

12:13:06 17 Q. Would that be different than unique workers?

12:13:12 18 MR. KIERNAN: Object to form.

12:13:13 19 THE WITNESS: Yes. This is employment -- you

12:13:14 20 know, again, I haven't reviewed this paper since 2006, so

12:13:19 21 I don't recall exactly what's in this paper. But I would

12:13:22 22 imagine this refers to employment spells of workers and

12:13:26 23 not unique workers, would be my recollection, but I'd

12:13:28 24 have to look at it closely. I'd have to read the rest of

12:13:31 25 the paper to remind myself.

12:13:33 1 BY MS. DERMODY:

12:13:33 2 Q. Okay. So it's essentially tracking 83,000

12:13:39 3 employment records; is that correct?

12:13:41 4 A. Employment spells.

12:13:42 5 MR. KIERNAN: Object to form.

12:13:43 6 BY MS. DERMODY:

12:13:44 7 Q. Can you help me, being someone not in your

12:13:47 8 industry, understand what a spell is. I'm not sure I got

12:13:49 9 it.

12:13:50 10 A. A spell is -- is two things in this dataset.

12:13:53 11 It is the beginning of employment, the day you arrive on

12:13:56 12 the job, until the day you end the job. That's one

12:13:58 13 definition of an "employment spell."

12:14:00 14 It could also be, since the data doesn't start

12:14:04 15 until 1992, and goes through 2001, it -- a spell could

12:14:09 16 also be the day we start to observe a person at that

12:14:13 17 employer or the time that we stop observing them, even

12:14:17 18 though they didn't terminate employment.

12:14:19 19 Q. Okay. And in this study, based on what it says

12:14:22 20 in this paragraph that we're looking at, were you

12:14:25 21 starting from a universe of data that had 83,497

12:14:30 22 employment spells for workers employed in the software

12:14:35 23 industry in 10 states from 1992 to 2001?

12:14:40 24 A. That's what it says here.

12:14:41 25 Q. Okay. And if you turn to the next page, as

12:14:51 1 indicated, did you limit the study to workers of a
12:14:57 2 certain age and a certain salary?

12:15:00 3 MR. KIERNAN: Object to form.

12:15:05 4 THE WITNESS: Yes, as it states here we did.

12:15:07 5 BY MS. DERMODY:

12:15:08 6 Q. And did you also limit it to a certain type of
12:15:11 7 company?

12:15:15 8 A. I don't know what you mean by "type of
12:15:16 9 company."

12:15:17 10 Q. Sorry. At the very end of the paragraph -- of
12:15:19 11 the first paragraph in that page, it talks about
12:15:28 12 businesses that could be matched, including the size,
12:15:31 13 age, sales, and product line information.

12:15:33 14 A. That's right.

12:15:33 15 Q. So were you trying to limit your study to
12:15:35 16 companies that were similar?

12:15:37 17 A. No.

12:15:37 18 MR. KIERNAN: Object to form.

12:15:38 19 THE WITNESS: We were not. We were just trying
12:15:40 20 to match datasets where we match the economic census data
12:15:44 21 for software firms to the LEHD data. We weren't limiting
12:15:49 22 it to any type of firm.

12:15:50 23 BY MS. DERMODY:

12:15:51 24 Q. So you were trying to match the workers to
12:15:53 25 firms?

12:15:53 1 A. Right.

12:15:54 2 Q. Okay. And then in the next paragraph you were

12:15:59 3 limiting the study to employees within the firm -- types

12:16:05 4 of employees within the firms, so software engineers,

12:16:08 5 developers, managers; is that correct?

12:16:10 6 A. For a different set of analysis. As you say

12:16:13 7 here, for this sample, we limit -- we limit our data --

12:16:18 8 well, that should say "our data" to those individuals in

12:16:21 9 the software industry, who are software engineers,

12:16:25 10 developers, or managers. That's in that particular set

12:16:28 11 of analysis.

12:16:41 12 Q. And do you recall doing regressions that

12:16:43 13 included factors such as age or sex or tenure?

12:16:50 14 MR. KIERNAN: Object to form.

12:16:50 15 BY MS. DERMODY:

12:16:51 16 Q. As part of this study?

12:16:52 17 A. I don't recall the exact functional form of the

12:16:55 18 regressions, but I -- if I look through the paper, I

12:16:58 19 would probably find that age and tenure were in the

12:17:03 20 regressions.

12:17:51 21 Q. Did you have a chance to confirm that in

12:17:54 22 looking at the regressions?

12:17:56 23 A. I can look at the tables --

12:17:58 24 MR. KIERNAN: Object to form.

25 //

12:17:59 1 BY MS. DERMODY:

12:17:59 2 Q. I'm sorry. I thought that's what you were

12:18:02 3 doing. I apologize.

12:18:03 4 A. So do you have a table in mind?

12:18:11 5 Q. I think you said if I looked through the paper,

12:18:15 6 that age and tenure were in the regressions. I assumed

12:18:18 7 when you were looking at the paper, that is what you were

12:18:21 8 looking for.

12:18:21 9 A. Okay. I'm looking now.

12:18:23 10 Again, I haven't read this paper in many years,

12:18:25 11 so I'd be speculating as to what it is, you know, some of

12:18:28 12 the details of the paper, but what you see here is that

12:18:30 13 in Table 7 it says, we can -- we have wage residuals for

12:18:38 14 regression controlling for age and tenure. So in that

12:18:39 15 sense we put age and tenure in one of the wage

12:18:43 16 regressions.

12:18:44 17 MS. DERMODY: Okay. So it's about 12:20. Is

12:18:48 18 this a good time for us to break for lunch? Thumbs up

12:18:52 19 from Mr. Tubach. All right.

12:18:56 20 How much time would you all like?

12:18:59 21 MR. KIERNAN: 20, 30 minutes.

12:19:03 22 MS. DERMODY: I think we'll need at least 30

12:19:04 23 minutes to eat. So --

12:19:06 24 THE VIDEOGRAPHER: We're off the record at

12:19:07 25 12:19.

12:19:08 1 (Luncheon recess was taken.)

13:02:29 2 THE VIDEOGRAPHER: We are now on the record at

13:02:30 3 1:02.

13:02:33 4 BY MS. DERMODY:

13:02:34 5 Q. Dr. Shaw, if we can keep on going with your

13:02:37 6 report, I think you have that in front of you.

13:02:39 7 A. Yes.

13:02:39 8 Q. And that's Exhibit 2848. If you could please

13:02:43 9 turn to paragraph 18, which is on page 7 --

13:02:51 10 A. Okay.

13:02:51 11 Q. -- and in this paragraph you state that the

13:02:55 12 concept of internal equity was used at the manager level

13:02:59 13 to make individual employee compensation decisions not on

13:03:02 14 a company-wide level to make automatic adjustments to

13:03:07 15 groups of people.

13:03:08 16 Do you see that?

13:03:09 17 A. Yes.

13:03:22 18 Q. And did you do anything to study whether there

13:03:25 19 were employee compensation decisions that happened --

13:03:30 20 sorry -- that there were adjustments made to groups of

13:03:32 21 people on a gradual level rather than on an automatic

13:03:36 22 level?

13:03:37 23 MR. KIERNAN: Object to form.

13:03:41 24 THE WITNESS: I don't know. "Gradual level"

13:03:45 25 meaning what?

13:21:46 1 MR. KIERNAN: Object to form.

13:21:48 2 THE WITNESS: I see that there are groups of

13:21:49 3 employees. I don't know what these designations mean,

13:21:53 4 and I don't know what it means to keep them in lock step.

13:21:57 5 I don't know if that refers to keeping them in

13:22:00 6 relationship to one another.

13:22:10 7 BY MS. DERMODY:

13:22:16 8 Q. What does "lock step" mean to you outside the

13:22:19 9 context of this email?

13:22:20 10 A. I have no definition of "lock step" outside the

13:22:24 11 context of this.

13:22:25 12 Q. You've never used the word before?

13:22:26 13 A. I've never used it. Not with respect to

13:22:37 14 personnel practices.

13:22:38 15 Q. Have you ever used the word in any context in

13:22:40 16 your life before?

13:22:42 17 A. Well, certainly I probably used it in some

13:22:44 18 point in my life, but not with respect to personnel

13:22:47 19 practices.

13:22:48 20 Q. If you have ever used it before, what was your

13:22:50 21 way of using it?

13:22:53 22 A. The way I would use "lock step" is to mean that

13:22:56 23 things move in a formal sequence.

13:23:00 24 Q. Related to each other, correct?

13:23:03 25 A. They move together.

13:23:22 1 Q. And when you developed your opinion that all
13:23:28 2 the compensation decisions are based on individual
13:23:30 3 manager decisions, you weren't -- you hadn't reviewed
13:23:33 4 this document, had you, Dr. Shaw?

13:23:35 5 MR. KIERNAN: Object to form.

13:23:39 6 THE WITNESS: This document doesn't state
13:23:41 7 otherwise. This document is referring to MRPs, and not
13:23:44 8 to managers' -- managers' decisions, and managers are
13:23:48 9 only supposed to take MRPs as recommended guidelines, not
13:23:53 10 as actual pay decisions.

13:23:55 11 BY MS. DERMODY:

13:23:55 12 Q. This document is inconsistent with your theory
13:23:57 13 that there are no company-level reviews for compensation
13:24:00 14 for groups; isn't that true?

13:24:02 15 A. I never --

13:24:02 16 MR. KIERNAN: Object to form.

13:24:04 17 THE WITNESS: I never stated there were no
13:24:05 18 company-level reviews of compensation.

13:24:08 19 BY MS. DERMODY:

13:24:08 20 Q. Okay. Is it your opinion there were
13:24:10 21 company-level reviews of compensation for groups of
13:24:13 22 employees in the company?

13:24:15 23 A. In evaluating the policies of these companies,
13:24:17 24 I'm sure that there are some companies within the
13:24:20 25 Defendant set that did review the compensation decisions

13:24:24 1 with their managers. That doesn't mean they overturned
13:24:26 2 the decisions. It means they reviewed the decisions.

13:24:29 3 Q. And which of those companies, do you recall,
13:24:31 4 that being the case?

13:24:32 5 A. I couldn't tell you out of the seven companies.

13:24:35 6 Q. And you didn't -- you didn't study that; is
13:24:37 7 that correct?

13:24:38 8 A. No.

13:24:38 9 MR. KIERNAN: Object to form.

13:24:42 10 THE WITNESS: I -- I -- I did read about it in
13:24:45 11 reviewing the compensation and employment practices of
13:24:49 12 these companies.

13:24:51 13 BY MS. DERMODY:

13:24:52 14 Q. Can you identify any Defendant that didn't
13:24:53 15 review the decision -- the pay decisions of managers in
13:24:56 16 some fashion?

13:24:57 17 A. I can recall many depositions in which the
13:25:02 18 person being deposed was asked whether managers had
13:25:05 19 complete discretion, and the implication was the managers
13:25:10 20 did, indeed, have complete discretion in determining what
13:25:13 21 salaries should be and what equity and bonus should be.

13:25:17 22 Q. Tell me right now a full list of the deponents
13:25:20 23 who said managers had complete discretion with no review
13:25:22 24 of pay decisions of employees.

13:25:27 25 A. That would be impossible for me to do.

13:25:28 1 MR. KIERNAN: Vague.

13:25:28 2 BY MS. DERMODY:

13:25:28 3 Q. How come?

13:25:29 4 A. There are 50 different depositions.

13:25:29 5 Q. This is the crux of your opinion, Dr. Shaw.

13:25:31 6 Name one deposition you looked at that said that.

13:25:34 7 MR. KIERNAN: Hang on. Object to form.

13:25:35 8 THE WITNESS: I couldn't look. I couldn't name

13:25:37 9 one deposition out of the 50 I read that would make that

13:25:40 10 statement, but I -- I believe that there were a number

13:25:45 11 that made that statement, and I can recall them.

13:25:49 12 BY MS. DERMODY:

13:25:49 13 Q. Tell me the number you think it was. Two?

13:25:52 14 Three, five?

13:25:53 15 A. Two, three, five Defendants or depositions?

13:25:57 16 Q. Depositions, that said managers had complete

13:25:58 17 discretion to make pay decisions without any review.

13:26:01 18 MR. KIERNAN: Object to form.

13:26:03 19 BY MS. DERMODY:

13:26:03 20 Q. At any company, at any time.

13:26:05 21 MR. KIERNAN: Object to form.

13:26:06 22 THE WITNESS: What the deposition said

13:26:08 23 repeatedly is that managers are given salary ranges,

13:26:13 24 market reference points, and that the ultimate salary

13:26:17 25 decision for the annual review is made by the manager.

13:26:19 1 BY MS. DERMODY:

13:26:20 2 Q. And tell me even a single deposition that said
13:26:22 3 managers had complete discretion without any oversight to
13:26:26 4 make pay decisions at the company.

13:26:28 5 MR. KIERNAN: Object to form.

13:26:30 6 THE WITNESS: I can't tell you that, but I'm
13:26:32 7 quite certain that I read many depositions in which they
13:26:35 8 said that it was ultimately up to the manager to make the
13:26:38 9 decision.

13:26:39 10 BY MS. DERMODY:

13:26:40 11 Q. But did you see any that said the managers
13:26:42 12 could make the decision without any oversight?

13:26:44 13 A. Well, I can't say whether it was in those
13:26:46 14 words, but the implication is that managers had
13:26:49 15 discretion in making pay decisions.

13:26:52 16 Q. Isn't it true, Dr. Shaw, that there isn't a
13:26:54 17 single deposition you read that said managers had
13:26:57 18 complete discretion to make pay decisions without any
13:27:00 19 oversight?

13:27:01 20 MR. KIERNAN: Object to form.

13:27:02 21 THE WITNESS: I couldn't say that. You know, I
13:27:03 22 read many depositions, and I don't -- doubt they used
13:27:07 23 exactly those words.

13:27:11 24 BY MS. DERMODY:

13:27:20 25 Q. Let's turn to paragraph 19 of your report. You

13:27:37 1 state in paragraph 19 that, quote, "Given the large size
13:27:41 2 of the labor market surveyed by consulting firms, it is
13:27:46 3 hard to imagine the suppression of pay in a few jobs
13:27:50 4 could lead to suppression of pay in benchmark data."

13:27:54 5 Do you see that in paragraph 19?

13:27:55 6 A. Yes.

13:27:55 7 Q. And how many firms are you assuming were in the
13:27:58 8 survey data that the Defendants reviewed?

13:28:02 9 MR. KIERNAN: Object to form.

13:28:04 10 THE WITNESS: It depends on the Defendant.

13:28:06 11 Some in the benchmarking studies had the entire labor
13:28:09 12 market, and some had a subset of firms, such as 20 or 30
13:28:14 13 firms.

13:28:14 14 BY MS. DERMODY:

13:28:15 15 Q. Tell me which had what.

13:28:17 16 A. I can't cite that off the top of my head for
13:28:20 17 all Defendants, but my recollection is that Apple had a
13:28:23 18 subset and other firms had the universe, but I couldn't
13:28:26 19 tell you off the top of my head without reviewing the
13:28:28 20 literature and the depositions to find that out.

13:28:31 21 Q. So you think Apple had a subset, and all the
13:28:34 22 rest had a complete universe?

13:28:36 23 A. No.

13:28:37 24 MR. KIERNAN: Wait. Wait. Object to form.

13:28:38 25 THE WITNESS: No. I didn't say that.

13:47:27 1 A. Because Radford is -- is surveying some very
13:47:30 2 large firms and obtaining data for positions within those
13:47:34 3 firms, and they're going to have a minimum sample size in
13:47:40 4 order to make the data public.

13:47:46 5 Q. So because there are some companies whose
13:47:48 6 headcount is large, therefore it must be that every
13:47:50 7 position has a large headcount; is that what your
13:47:53 8 assumption is?

13:47:55 9 MR. KIERNAN: Object to form.

13:47:56 10 THE WITNESS: I'm stating that Radford wouldn't
13:47:57 11 make the data public for a particular position if they
13:48:01 12 didn't have a large enough sample size to create a mean
13:48:04 13 value that can be reported back.

13:48:07 14 BY MS. DERMODY:

13:48:07 15 Q. And what is the Radford criteria for size of
13:48:14 16 position?

13:48:15 17 A. I don't know that criteria.

13:48:18 18 Q. Do you know they have an absolute population
13:48:21 19 headcount that must exist before Radford reports it?

13:48:26 20 A. No, I don't know.

13:48:27 21 MR. KIERNAN: Object to form.

13:48:28 22 BY MS. DERMODY:

13:48:28 23 Q. Okay. So you're just making that up; is that
13:48:30 24 correct?

13:48:30 25 A. They're surveying large firms and reporting

13:48:33 1 back confidential data. Therefore, they'd want to report
13:48:36 2 it back only if they had a reasonable sample size for
13:48:39 3 that reporting.

13:48:40 4 Q. But you don't know if that is actually a rule
13:48:42 5 at all for Radford; isn't that right?

13:48:44 6 A. I haven't studied how Radford reports data.

13:49:01 7 Q. And you said the survey companies report back a
13:49:04 8 mean value, is that what you said?

13:49:07 9 MR. KIERNAN: Object to form.

13:49:08 10 BY MS. DERMODY:

13:49:09 11 Q. Per title?

13:49:10 12 MR. KIERNAN: Object to form.

13:49:11 13 THE WITNESS: Well, they would report mean in
13:49:14 14 characteristics of the distribution.

13:49:16 15 BY MS. DERMODY:

13:49:17 16 Q. What is your understanding of what the mean
13:49:18 17 value is?

13:49:20 18 A. They report back the midpoint and the range so
13:49:24 19 that companies can form their benchmarking ranges.

13:49:31 20 Q. So this is just saying the average salary that
13:49:33 21 is reported back; is that what you are saying?

13:49:36 22 MR. KIERNAN: Object to form.

13:49:36 23 BY MS. DERMODY:

13:49:37 24 Q. I want to understand what the term is. That's
13:49:40 25 all.

13:49:40 1 MR. KIERNAN: Object to form.

13:49:41 2 THE WITNESS: Yeah. Mean -- mean is average.

13:49:43 3 BY MS. DERMODY:

13:49:49 4 Q. And why is it important to keep the survey

13:49:52 5 results confidential?

13:49:55 6 MR. KIERNAN: Object to form.

13:49:57 7 THE WITNESS: What do you mean by "keep the

13:49:58 8 survey results confidential"?

13:50:21 9 BY MS. DERMODY:

13:50:21 10 Q. I'm trying to find it in the testimony. I

13:50:23 11 don't want to misstate you. I want to find out what you

13:50:25 12 meant when you said something.

13:50:26 13 I asked you a question -- it went away.

13:50:38 14 THE REPORTER: Hit enter when you find it.

13:50:38 15 MS. DERMODY: Okay.

13:51:16 16 Q. You said about the survey companies in an

13:51:17 17 answer, "They are surveying large firms and reporting

13:51:17 18 back confidential data. Therefore, they'd want to report

13:51:17 19 it back only if they had a reasonable sample size for

13:51:17 20 that reporting."

13:51:17 21 And my question is about the confidentiality

13:51:19 22 that you're describing.

13:51:21 23 A. Certainly. So what I have in mind is if it was

13:51:25 24 the job title that was only held at one job at Apple, and

13:51:30 25 they reported that to Radford, that Radford would not

13:51:34 1 report that back to companies, because that would violate
13:51:37 2 the confidentiality of the data, because everyone could
13:51:39 3 identify it as an Apple job.

13:51:44 4 Q. Is that something you know from talking to
13:51:46 5 Radford, or are you just speculating that might be the
13:51:51 6 confidentiality concern?

13:51:52 7 A. I'm speculating when you use surveys of this
13:51:54 8 nature, and I've worked on other surveys of this nature,
13:51:56 9 that that's how they're conducted.

13:52:59 10 Q. All right. We've placed in front of you a
13:53:01 11 document previously marked as Exhibit 1606. Do you see
13:53:04 12 that on the first page?

13:53:06 13 A. Yes.

13:53:08 14 Q. And have you seen this document before?

13:53:14 15 A. This looks familiar.

13:53:21 16 Q. And if you turn to the page marked 1606.12, do
13:53:25 17 you see that?

13:53:36 18 A. Yes.

13:53:36 19 Q. Where it says, "Benchmarking Overview"?

13:53:38 20 A. Right.

13:53:38 21 Q. Do you see that?

13:53:39 22 A. Right.

13:53:40 23 Q. And it indicates, "How do we measure the
13:53:43 24 market?" Do you see that in the middle of the page?

13:53:45 25 A. Yes.

13:53:46 1 Q. And you see there is a [REDACTED]
[REDACTED] Do you see that?

13:53:52 3 A. Yes.

13:53:53 4 Q. And on this Google document, Google lists four
13:53:56 5 of the co-Defendants, Apple, Intel, Intuit, and Adobe.

13:54:01 6 Do you see that?

13:54:02 7 MR. KIERNAN: Object to form.

13:54:03 8 THE WITNESS: Yes.

13:54:04 9 BY MS. DERMODY:

13:54:05 10 Q. And would it make a difference to your analysis
13:54:07 11 if Google was collecting information where 20 percent of
13:54:12 12 the survey material was tainted?

13:54:16 13 MR. KIERNAN: Object to form.

13:54:26 14 THE WITNESS: If Google would present 20
13:54:27 15 percent that was tainted. Of what survey data?

13:54:31 16 BY MS. DERMODY:

13:54:31 17 Q. [REDACTED]

13:54:38 18 A. There is only -- in this -- there are [REDACTED]
13:54:40 19 companies here of which [REDACTED]. So what
13:54:43 20 makes you say 20 percent would be tainted?

13:54:46 21 Q. There is one, two, three, four of --

13:54:49 22 A. Oh, four. Wait. Apple, Intel --

13:54:52 23 Q. Intuit, Adobe.

13:54:58 24 A. Okay. There are four that are Defendants, yes.

13:55:00 25 Q. Plus Google is a Defendant.

13:55:02 1 A. So out of [REDACTED]--

13:55:04 2 Q. Five are defendants.

13:55:05 3 A. Of [REDACTED] five are defendants. Okay. So where do

13:55:09 4 you get the number that 20 percent would be tainted?

13:55:13 5 Q. So if in that survey data, you've got five of

13:55:23 6 [REDACTED] companies with tainted data, wouldn't you have a

13:55:26 7 concern about your analysis about using market data?

13:55:29 8 A. I disagree with your assumption that tainted

13:55:32 9 data is going to be widespread within five of these

13:55:35 10 companies.

13:55:37 11 Q. If you assume that the data of the five

13:55:40 12 companies was tainted, and that they were looking at only

13:55:43 13 the subset of companies in comparing themselves, wouldn't

13:55:47 14 you be concerned that there would be tainted data

13:55:49 15 reported back that would influence compensation

13:55:51 16 decisions?

13:55:52 17 MR. KIERNAN: Object to form.

13:55:54 18 THE WITNESS: I'm not concerned because you

13:55:56 19 haven't given me a number of taint -- a percent of the

13:56:00 20 workforce that has tainted data, and I'm going to suggest

13:56:05 21 it is going to be small, and you have no evidence

13:56:07 22 otherwise.

13:56:08 23 BY MS. DERMODY:

13:56:08 24 Q. Well, Dr. Shaw, did you consider the reports of

13:56:10 25 Dr. Leamer when you were coming to your conclusions?

13:56:14 1 A. I read Dr. Leamer's report, but it wasn't
13:56:17 2 relevant to assessing Kevin Hallock's work.
13:56:22 3 Q. So you didn't consider Dr. Leamer's report to
13:56:26 4 have any relevance to the question of impact; is that
13:56:30 5 correct?
13:56:31 6 MR. KIERNAN: Object to form.
13:56:32 7 THE WITNESS: I was not asked to assess overall
13:56:35 8 impact.
13:56:36 9 BY MS. DERMODY:
13:56:44 10 Q. And, therefore, you didn't review Dr. Leamer's
13:56:47 11 reports for that purpose; is that correct?
13:56:49 12 MR. KIERNAN: Object to form.
13:56:50 13 THE WITNESS: I was reviewing Kevin Hallock
13:56:53 14 and -- and I stated my assignment earlier. I did read
13:56:57 15 Dr. Leamer's report.
13:56:58 16 BY MS. DERMODY:
13:56:58 17 Q. But you didn't consider it relevant for the
13:57:00 18 issue of impact; is that correct?
13:57:02 19 MR. KIERNAN: Object to form.
13:57:03 20 THE WITNESS: I was not asked to assess impact.
13:57:05 21 BY MS. DERMODY:
13:57:06 22 Q. Okay. And you didn't consider Dr. Leamer's
13:57:08 23 report as evidence of impact; is that correct?
13:57:13 24 A. I just stated I wasn't asked to assess impact.
13:57:17 25 Q. I think you actually just stated that there

13:57:19 1 what no evidence of impact. Isn't that what you just
13:57:24 2 stated, Dr. Shaw?

13:57:25 3 MR. KIERNAN: Object to form.

13:57:26 4 THE WITNESS: I don't recall. Are you reading
13:57:28 5 it to me?

13:57:29 6 BY MS. DERMODY:

13:57:30 7 Q. We can read it to you. This is back here where
13:57:54 8 you were testifying, if you recall, about whether there
13:57:56 9 was tainted data, right?

13:58:00 10 A. Okay.

13:58:01 11 Q. You said there is no evidence to suggest that
13:58:04 12 it is not small. Is that correct? That's what you said.
13:58:10 13 Is that correct?

13:58:24 14 MR. KIERNAN: Object to form.

13:58:25 15 THE WITNESS: Yes. That's what I said.

13:58:26 16 BY MS. DERMODY:

13:58:27 17 Q. Okay. And you didn't consider Dr. Leamer's
13:58:32 18 analyses as evidence of impact; is that correct?

13:58:36 19 MR. KIERNAN: Object to form.

13:58:40 20 THE WITNESS: In the -- in the documents that I
13:58:42 21 reviewed, I saw no evidence of impact that would be
13:58:45 22 significant that would cause tainted data to be reported
13:58:49 23 back to these benchmarking firms.

13:58:52 24 BY MS. DERMODY:

13:58:52 25 Q. Okay. And do you recall what Dr. Leamer said

14:02:25 1 BY MS. DERMODY:

14:02:25 2 Q. Isn't that the point of regression, to test a

14:02:27 3 theory, as you said earlier, Dr. Shaw?

14:02:31 4 A. Dr. Leamer's analysis looks for correlations in

14:02:36 5 the data, but need not establish causal relationships.

14:02:42 6 Q. And did you actually run the data analyses

14:02:46 7 yourself?

14:02:47 8 A. No, I did not.

14:02:47 9 Q. So that's -- you're basing that on what

14:02:49 10 Dr. Murphy said about Dr. Leamer; is that correct?

14:02:53 11 MR. KIERNAN: Object to form.

14:02:55 12 THE WITNESS: I read all the reports, and it's

14:02:58 13 my assessment that he tested for impact, but that that

14:03:01 14 impact has not been verified.

14:03:04 15 BY MS. DERMODY:

14:03:09 16 Q. Have you read Dr. Leamer's -- all three of

14:03:12 17 Dr. Leamer's reports?

14:03:13 18 A. Yes, I have.

14:03:15 19 Q. Including the one that was submitted last

14:03:17 20 December?

14:03:18 21 A. Yes.

14:03:20 22 Q. But you didn't cite those in your report.

14:03:23 23 MR. KIERNAN: Object to form.

14:03:25 24 THE WITNESS: Those weren't relevant to my

14:03:26 25 assignment to evaluate Kevin Hallock's work.

14:03:33 1 MR. KIERNAN: Could we take a convenience
14:03:35 2 break?
14:03:36 3 MS. DERMODY: Sure.
14:03:37 4 THE VIDEOGRAPHER: This is the end of Video
14:03:38 5 No. 2. We are now off the record at 2:03.
14:09:31 6 (Recess was taken.)
14:18:54 7 THE VIDEOGRAPHER: We are now on the record at
14:18:55 8 2:18. This is the beginning of Video No. 3.
14:18:59 9 BY MS. DERMODY:
14:19:00 10 Q. Dr. Shaw, going back to your report, paragraph
14:19:04 11 20, it's on page 8, if you would. In --
14:19:06 12 I'm sorry. Are you okay? The most important
14:19:06 13 part of the depo, whether you can be heard.
14:19:06 14 THE REPORTER: I have to hear every word.
14:19:06 15 Okay.
14:19:06 16 BY MS. DERMODY:
14:19:30 17 Q. In paragraph 20, you state that you are not
14:19:32 18 aware of any evidence that market data on base salary
14:19:37 19 increased percentages was suppressed."
14:19:41 20 Do you see that?
14:19:42 21 A. Yes, I do.
14:19:43 22 Q. And did you review any evidence that the
14:19:44 23 Defendants communicated with each other about their plans
14:19:49 24 for salary budget increases?
14:19:56 25 A. I don't know what you're referring to. The

14:19:58 1 Defendants communicated among who?

14:20:00 2 Q. Each other about that topic.

14:20:03 3 MR. KIERNAN: Object to form.

14:20:15 4 THE WITNESS: Yes, I read some depositions

14:20:16 5 where they communicated about salary.

14:20:21 6 BY MS. DERMODY:

14:20:22 7 Q. About salary budget increases; is that correct?

14:20:25 8 A. About -- I don't recall salary budget

14:20:27 9 increases, no. That's not correct.

14:21:02 10 Q. Dr. Shaw, the document I placed in front of you

14:21:05 11 was previously marked as Exhibit 122.

14:21:07 12 Do you see that?

14:21:13 13 A. Yes.

14:21:13 14 Q. Do you recognize that document?

14:21:20 15 A. It looks like it comes out of the McAdams

14:21:23 16 deposition.

14:21:24 17 Q. And do you recognize reading that one?

14:21:25 18 A. I can't recall.

14:21:29 19 Q. And as indicated on the top of the document, it

14:21:31 20 is from Lori McAdams, and Ms. McAdams has a Pixar dot-com

14:21:36 21 email address. Do you see that?

14:21:39 22 A. Yes, I do.

14:21:40 23 Q. And Ms. McAdams is writing a number of people,

14:21:42 24 including Sharon Coker. Do you see that?

14:21:45 25 A. Yes, I do.

14:21:45 1 Q. And your report indicates that you reviewed
14:21:48 2 Ms. Coker's deposition. Do you recall that?
14:21:52 3 A. Yes, that's right.
14:21:54 4 Q. And do you recall that Ms. Coker is a senior
14:21:56 5 director of human resources at Lucasfilm?
14:22:00 6 A. Yes, that's right.
14:22:01 7 Q. And in looking at this email, is it your
14:22:04 8 understanding that this is a communication from
14:22:07 9 Ms. McAdams at Pixar to Ms. Coker and others at Lucas
14:22:12 10 sharing Pixar's expected budget increase numbers in
14:22:16 11 asking for Lucasfilms?
14:22:22 12 MS. SESSIONS: Object to form.
14:22:24 13 MR. KIERNAN: Object to form.
14:22:25 14 THE WITNESS: I see that Ms. McAdams is writing
14:22:29 15 to these people and -- and sharing her budget
14:22:34 16 information, or at least what she thinks it will be. I
14:22:39 17 don't -- I don't know whether this is her actual budget,
14:22:42 18 but this is her view of the budget, 4 percent.
14:22:47 19 BY MS. DERMODY:
14:22:47 20 Q. She is also asking for the salary increase
14:22:50 21 budget from Ms. Coker and others; is that correct?
14:22:54 22 MR. KIERNAN: Object to form.
14:22:59 23 THE WITNESS: She's asking again if they're
14:23:01 24 doing anything close more or less. She's not asking
14:23:05 25 for -- she doesn't ask for exact budget numbers.

14:23:11 1 BY MS. DERMODY:

14:23:11 2 Q. Well, if you see the sentence -- the second

14:23:14 3 sentence of the email says, "What is your salary increase

14:23:17 4 for the budget FY07." Do you see that?

14:23:20 5 A. Yes. But she follows it up by saying anything

14:23:22 6 close more or less.

14:23:24 7 Q. In looking at this document, does this refresh

14:23:26 8 your view that Ms. McAdams at Pixar and Ms. Coker were at

14:23:32 9 least in communication about what Pixar's salary increase

14:23:35 10 budget was?

14:23:37 11 MR. KIERNAN: Object to form.

14:23:45 12 THE WITNESS: Well, this shows that McAdams is

14:23:48 13 writing Coker with her budget information. I don't know

14:23:50 14 how common it is for these Defendants to share budget

14:23:54 15 information.

14:23:55 16 BY MS. DERMODY:

14:23:56 17 Q. Okay. Sorry, Dr. Shaw. I put a new document

14:24:38 18 down for you. The document placed in front of you was

14:24:43 19 previously marked as Exhibit 621. Do you see that stamp

14:24:47 20 on this document?

14:24:48 21 A. Yes.

14:24:49 22 Q. And do you see this as an email attaching other

14:24:53 23 emails from Shona Brown at Google.com?

14:24:57 24 A. Yes.

14:24:57 25 Q. To other people?

14:24:58 1 A. Yes.

14:24:59 2 Q. Okay. And if you recall your report, I think

14:25:07 3 you list having read Shona Brown's deposition; is that

14:25:09 4 correct?

14:25:10 5 A. That's right.

14:25:11 6 Q. And do you recall she was a senior vice

14:25:13 7 president of People Operations, the HR arm of Google?

14:25:17 8 A. That's right.

14:25:19 9 Q. On the second page of the document, there is an

14:25:25 10 email that starts at the bottom from Mr. Bock, which is

14:25:30 11 directed to OC folks. Do you see that email?

14:25:41 12 A. Yes.

14:25:42 13 Q. Okay. And the email continues on to page 3.

14:25:46 14 Do you see that?

14:25:48 15 A. Yes.

14:25:49 16 Q. And on page 3 it indicates as the third point

14:25:54 17 on that page, [REDACTED]

[REDACTED] [REDACTED] Do you see that?

14:26:00 19 A. Yes.

14:26:01 20 Q. And do you see under (A) where it says, [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

14:26:11 23 Do you see that?

14:26:12 24 A. Yes.

14:26:13 25 Q. And do you see where it says, [REDACTED]

14:26:15 1 [REDACTED] and it lists five different
14:26:19 2 companies. Do you see that?

14:26:20 3 A. Yes.

14:26:20 4 Q. And among those five companies are three
14:26:22 5 Defendants, Adobe, Apple, and Intel. Do you see that?

14:26:29 6 A. Yes, I do.

14:26:30 7 Q. Does that refresh your understanding that

14:26:35 8 [REDACTED]

[REDACTED] [REDACTED]
14:26:43 10 MR. KIERNAN: Object to form.

14:27:03 11 THE WITNESS: So this is an email from Mr. Bock
14:27:04 12 to OC folks? Is that what we're looking at?

14:27:07 13 BY MS. DERMODY:

14:27:08 14 Q. Yes, starting on page 2 and going down to page
14:27:14 15 3.

14:27:27 16 A. They appear to be shared budget information.

14:27:39 17 Q. If the Defendants were sharing data, and if
14:27:42 18 hypothetically it was tainted by wage suppression,
14:27:45 19 wouldn't this necessarily have some effect on the overall
14:27:48 20 salary budgets?

14:27:50 21 MR. KIERNAN: Object to form.

14:27:51 22 THE WITNESS: That's not what I'm writing about
14:27:53 23 here. You drew my attention to point number -- point 20,
14:27:56 24 and in that I state that, I'm not aware of any evidence
14:27:59 25 that market data on base salary increased percentages was

14:28:03 1 suppressed or that the suppressed data resulted in an
14:28:08 2 impact on all or nearly all class members.

14:28:10 3 That's not the same as sharing budget
14:28:13 4 information.

14:28:13 5 BY MS. DERMODY:

14:28:14 6 Q. I'm exploring that with you, Dr. Shaw.

14:28:16 7 So I'm asking you if the Defendants were
14:28:19 8 sharing this data as they were, and if you assume
14:28:21 9 hypothetically that the data was tainted by wage
14:28:24 10 suppression, wouldn't that necessarily have some effect
14:28:28 11 on overall salary budgets?

14:28:31 12 MR. KIERNAN: Object to form.

14:28:33 13 THE WITNESS: As I said, I disagree with the
14:28:37 14 assumption that it was tainted, and it would have an
14:28:40 15 impact on salary budgets, but it wouldn't have an impact
14:28:44 16 on all or nearly all class members because salaries are
14:28:48 17 actually chosen by individual managers as a function of
14:28:53 18 performance pay. So it wouldn't -- you wouldn't reach
14:28:56 19 the conclusion that it would impact all or nearly all
14:28:58 20 class members.

14:28:59 21 BY MS. DERMODY:

14:29:00 22 Q. Well, if there was a difference in a salary
14:29:02 23 budget, let's say it was .5 percent, okay?

14:29:10 24 A. Different, you mean.

14:29:11 25 Q. Let's say it was .5 percent, hypothetically.

14:30:25 1 Q. So you have no empirical evidence that mid-tier
14:30:29 2 performers would see no benefit if the salary budget was
14:30:33 3 increased; is that correct?

14:30:34 4 MR. KIERNAN: Object to form.

14:30:36 5 THE WITNESS: There is -- the evidence is that
14:30:38 6 there is high variability in this and that low performers
14:30:42 7 need not benefit. Mid-performers -- it could be that
14:30:45 8 when there is a salary reduction, that it goes all to
14:30:48 9 star performers. It was up to the individual managers to
14:30:51 10 decide how to allocate that budget, and when there is a
14:30:54 11 change in the budget, that need not impact all or nearly
14:30:58 12 all class members.

14:30:59 13 BY MS. DERMODY:

14:31:00 14 Q. Please tell me what is the empirical evidence
14:31:03 15 that if a salary budget was raised, that a mid-tier
14:31:07 16 performer would stay the same in terms of how much money
14:31:09 17 they made.

14:31:10 18 A. We don't have that evidence, because we don't
14:31:11 19 have budget data, but we do have the evidence that there
14:31:14 20 is high variability in wages across all individuals so
14:31:19 21 that it need not be the case that all or nearly all class
14:31:22 22 members are affected.

14:31:23 23 Q. So the only empirical evidence that an increase
14:31:26 24 in salary budget would only impact a few people is that
14:31:30 25 there is high variability in wage; is that correct?

14:31:33 1 MR. KIERNAN: Object to form.

14:31:41 2 THE WITNESS: The evidence is that from one

14:31:42 3 year to the next, pay increases vary tremendously across

14:31:46 4 individuals, so that when the salary budget changes, it

14:31:50 5 need not be the case that it would effect all or nearly

14:31:53 6 all class members.

14:31:54 7 BY MS. DERMODY:

14:32:06 8 Q. And what is your understanding of the

14:32:09 9 percentage of employees that were low performers that

14:32:12 10 would get no salary increase no matter what at any given

14:32:16 11 firm in any given year?

14:32:18 12 MR. KIERNAN: Object to form.

14:32:21 13 THE WITNESS: I don't have the numbers for low

14:32:24 14 performers across years. Those aren't in the datasets

14:32:27 15 that were provided to Kevin, and they're not available.

14:32:32 16 BY MS. DERMODY:

14:32:33 17 Q. Do you have any informed guess as to what those

14:32:37 18 numbers would be? I mean would you expect that 25

14:32:40 19 percent of these companies are low performers that won't

14:32:44 20 get any raise?

14:32:53 21 A. There is no way of knowing because raises are

14:32:55 22 given out on a highly individual level so that even

14:32:59 23 though -- even if we had the performance evaluation data,

14:33:04 24 we'd have to link it up to the pay data in order to tell

14:33:07 25 what those percentages are.

14:33:08 1 Q. Well, Dr. Shaw, you studied different companies
14:33:10 2 in Silicon Valley; is that right?
14:33:13 3 A. That's correct.
14:33:13 4 Q. And have you ever seen a company where 25
14:33:15 5 percent of the company was performing so poorly that
14:33:17 6 thing didn't deserve a raise?
14:33:20 7 MR. KIERNAN: Object to form.
14:33:21 8 THE WITNESS: The companies have never revealed
14:33:23 9 their wage information as correlated with their
14:33:26 10 performance evaluation information.
14:33:28 11 BY MS. DERMODY:
14:33:29 12 Q. So you've never studied performance evaluation
14:33:31 13 related to pay; is that correct?
14:33:33 14 MR. KIERNAN: Object to form.
14:33:36 15 THE WITNESS: I've discussed performance
14:33:37 16 evaluation pay, and it's quite apparent that in these
14:33:41 17 tech companies when they have low performers, they do not
14:33:44 18 give them pay increases, and that was clear on all the
14:33:47 19 depositions and -- that I read, where it was strongly
14:33:51 20 advised that managers were given guidelines to give zero
14:33:55 21 increases to low performers.
14:33:57 22 MS. DERMODY: I'm going to move to strike that
14:33:59 23 last answer as non-responsive.
14:34:01 24 Q. Dr. Shaw, in your history of decades of
14:34:06 25 studying companies, have you ever studied the

14:34:10 1 relationship between performance rating and pay?

14:34:15 2 A. I've studied it only in talking to companies,

14:34:18 3 and I haven't studied it with data, because that data is

14:34:27 4 confidential, but I've studied it in conversations with

14:34:30 5 companies and conversations with executives.

14:34:32 6 Q. And what published peer-reviewed articles do

14:34:35 7 you have on the relationship between performance rating

14:34:37 8 and pay?

14:34:42 9 A. There are no published peer-reviewed articles

14:34:45 10 on it.

14:34:46 11 Q. Going back to your report, paragraph 24, you

14:35:16 12 state that a formalized compensation system,

14:35:19 13 quote/unquote, "can be carried out and implemented in a

14:35:23 14 way that some workers' wages can be adjusted without

14:35:26 15 widespread effect on other workers."

14:35:29 16 Do you see that?

14:35:30 17 A. Yes.

14:35:30 18 Q. Have you done an empirical study of that here?

14:35:47 19 A. No, Dr. Hallock did not present an empirical

14:35:52 20 study, and I do not have an empirical study of how

14:35:55 21 workers wages -- not in this manner.

14:35:58 22 Q. Have you ever studied that quantitatively in

14:36:01 23 any other organization?

14:36:12 24 A. These datasets are not typically made available

14:36:14 25 to researchers.

14:36:15 1 Q. So the answer is no?

14:36:17 2 A. So I haven't studied the quantitative impact.

14:36:39 3 Q. Paragraph 25, you indicate in this paragraph

14:36:43 4 that, one should examine the data to determine whether

14:36:46 5 there was impact to all or nearly all class members. Do

14:36:50 6 you see that? I'm not quoting, I'm paraphrasing.

14:36:58 7 A. Right.

14:37:00 8 Q. And it's fair to say that you didn't do that

14:37:03 9 study here; is that correct?

14:37:04 10 A. Well, when you paraphrase, you say, one should

14:37:07 11 examine the evidence regarding how actual pay decisions

14:37:09 12 were made and the compensation data. I have examined the

14:37:13 13 evidence on how actual pay decisions were made.

14:37:16 14 Q. But you didn't study the data; is that correct?

14:37:18 15 A. The data is -- I didn't study the data.

14:37:21 16 Q. Okay.

14:37:22 17 A. But I did study the evidence on how they were

14:37:24 18 made.

14:37:24 19 Q. But you didn't study the limitations on

14:37:27 20 discretion or anything else like that as we talked about

14:37:29 21 earlier; is that correct?

14:37:31 22 MR. KIERNAN: Object to form.

14:37:33 23 THE WITNESS: There is no data on -- there is

14:37:38 24 no dataset provided that would show limitations on

14:37:40 25 discretion.

14:45:01 1 wouldn't that be your conclusion, it was a rule, not a
14:45:05 2 guideline?

14:45:06 3 MR. KIERNAN: Object to form.

14:45:10 4 THE WITNESS: No. It could well be that annual
14:45:13 5 pay increases still kept people within the salary range
14:45:17 6 even though they were targeting pay for performance as a
14:45:20 7 function so that the annual increase was a function of
14:45:23 8 performance.

14:45:25 9 BY MS. DERMODY:

14:45:59 10 Q. Okay. Going to paragraph 38, as indicated in
14:46:16 11 38, you would agree, wouldn't you, that there are
14:46:18 12 occasions when pay is adjusted for employees who get
14:46:23 13 outside offers; is that right?

14:46:26 14 A. As I say here, in relative rare instances, pay
14:46:30 15 may be adjusted to retain an employee when he or she
14:46:34 16 receives an outside offer.

14:46:39 17 Q. And on what evidence do you say that this is a
14:46:41 18 rare occasion?

14:46:44 19 A. I say it based on the evidence from the
14:46:46 20 depositions where people are often asked how often they
14:46:50 21 counteroffer, and they say it's very rare, and it's
14:46:54 22 only -- counteroffers are only made to those individuals
14:46:57 23 who are star performers.

14:46:58 24 Q. Did you also see deposition evidence that
14:47:01 25 showed companies acting proactively preemptively to

14:47:05 1 adjust salaries to avoid retention or attrition risks?

14:47:12 2 A. There is a way in which companies react

14:47:14 3 proactively, and react -- I mean how -- there is a way in

14:47:17 4 which companies attempt to preempt people leaving, and

14:47:22 5 the way they do that is by gathering market data so that

14:47:25 6 they target the market wage to what is the alternative

14:47:30 7 wage would be for the employee.

14:47:39 8 Q. And isn't one of the ways to ascertain what the

14:47:42 9 market rate is for employees by finding out what

14:47:45 10 competitors are offering for those jobs?

14:47:48 11 MR. KIERNAN: Object to form.

14:47:49 12 THE WITNESS: The way in which they act

14:47:51 13 preemptively is by gathering data from firms like Radford

14:47:54 14 to find out what the ongoing salaries are and also using

14:47:58 15 data on equity and bonus to try and pay people what their

14:48:02 16 alternative wage would be.

14:48:03 17 BY MS. DERMODY:

14:48:04 18 Q. Is it your testimony that companies did not use

14:48:06 19 competitive offers to ascertain what the market is paying

14:48:09 20 for salaries?

14:48:11 21 MR. KIERNAN: Object to form.

14:48:12 22 THE WITNESS: What -- what companies do is they

14:48:14 23 use the Radford data and like Radford data to figure out

14:48:19 24 what the alternative wage is at companies.

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14:48:21 1 BY MS. DERMODY:

14:48:22 2 Q. May I ask again since you didn't answer the

14:48:24 3 question.

14:48:24 4 Is it your testimony that companies did not use

14:48:26 5 competitive offers to ascertain what the market is paying

14:48:29 6 for salaries? "Yes" or "no"?

14:48:31 7 MR. KIERNAN: Object to form.

14:48:31 8 THE WITNESS: I don't know that I testified to

14:48:33 9 that earlier. Do you have those words?

14:48:35 10 BY MS. DERMODY:

14:48:35 11 Q. I'm trying to understand what your testimony

14:48:37 12 is. You said the companies use Radford data. Is that

14:48:40 13 the only thing they use, but do they also use competitive

14:48:44 14 offers?

14:48:44 15 MR. KIERNAN: Object to form.

14:48:46 16 THE WITNESS: They will on occasion match a

14:48:47 17 competitive offer in rare instances where people -- where

14:48:52 18 a person is a star performer.

14:48:54 19 BY MS. DERMODY:

14:48:54 20 Q. And we're talking now about preemptive

14:48:58 21 strategies to prevent attrition, correct?

14:49:02 22 A. Okay.

14:49:03 23 Q. And one of the ways that you testified they

14:49:08 24 use -- they ascertain they should -- they should use a

14:49:15 25 preemptive strategy is by using market data; is that

14:54:01 1 And certainly during the recession that was less so.

14:54:04 2 BY MS. DERMODY:

14:54:05 3 Q. Are you aware that in the Valley, in general,
14:54:07 4 in the last eight years, there has been a very high
14:54:11 5 demand for engineering talent?

14:54:13 6 A. Again, you'd have to state what it means to be
14:54:16 7 a very high demand.

14:54:18 8 Q. Would you admit that there has been a demand
14:54:20 9 for engineering talent, Dr. Shaw?

14:54:22 10 A. The demand was higher prior to the recession, I
14:54:25 11 would admit that.

14:54:26 12 Q. And prior to 2009?

14:54:28 13 A. Prior to -- right, prior to the recession in
14:54:31 14 2009.

14:54:31 15 Q. And did you make any attempt to determine
14:54:38 16 whether there was more resistance to technical people
14:54:46 17 leaving firms when there was such a high demand in that
14:54:49 18 time period?

14:54:51 19 MR. KIERNAN: Object to form.

14:55:07 20 THE WITNESS: I don't -- I don't know what
14:55:08 21 you're referring to. Did I do a study to see what
14:55:11 22 turnover changed with the business cycle? Is that what
14:55:14 23 you're asking?

14:55:14 24 BY MS. DERMODY:

14:55:15 25 Q. Or whether there was fewer people considered

14:55:22 1 lower achievers in that cycle.

14:55:25 2 MR. KIERNAN: Object to form.

14:55:33 3 THE WITNESS: There are lower achievers every

14:55:35 4 year. I'm not sure what -- what study you want me to do.

14:55:38 5 BY MS. DERMODY:

14:55:39 6 Q. You didn't do anything with performance ratings

14:55:42 7 in this case; is that right?

14:55:43 8 A. That's correct.

14:56:38 9 Q. In the course of your investigation in this

14:56:41 10 case, did you come across information about the Google

14:56:44 11 Big Bang?

14:56:46 12 A. Yes, I did.

14:56:47 13 Q. And what's your understanding what that was?

14:56:50 14 A. My understanding is that over time Google has

14:56:59 15 evolved from a company that paid out a significant

14:57:02 16 portion of their pay in equity and shifted during the Big

14:57:06 17 Bang to a significant portion of their pay in base

14:57:09 18 salary, because their employees had aged over time, and

14:57:12 19 because stock was worth less. So they decided to shift

14:57:17 20 more towards base and away from stock.

14:57:19 21 Q. And aren't you aware that as a result of the

14:57:22 22 change, every employee's base salary went up 10 percent?

14:57:25 23 A. Yes, I am.

14:57:26 24 MR. KIERNAN: Object to form.

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14:57:27 1 BY MS. DERMODY:

14:57:27 2 Q. And are you aware that that happened after the

14:57:29 3 Department of Justice investigated Google and others for

14:57:32 4 the no cold calling agreements and stopped them from

14:57:35 5 doing that?

14:57:36 6 A. Stopped them from doing what?

14:57:38 7 Q. Having no cold call agreements.

14:57:40 8 MR. KIERNAN: Object to form.

14:57:44 9 THE WITNESS: Yes. It occurred after the

14:57:46 10 Department of Justice investigation. I'm -- that's true.

14:57:49 11 BY MS. DERMODY:

14:58:09 12 Q. And isn't the Google Big Bang an example of a

14:58:13 13 company making a corporate-wide change to salary that

14:58:16 14 affected every employee at the company?

14:58:19 15 MR. KIERNAN: Object to form.

14:58:20 16 THE WITNESS: They were making an adjustment in

14:58:22 17 how they paid people during one instance, but that

14:58:26 18 doesn't mean that they -- that -- that that was one pay

14:58:30 19 adjustment across all employees, but that doesn't mean

14:58:33 20 that they were -- that this is a common, you know,

14:58:37 21 change. No other companies made such a change.

14:58:40 22 BY MS. DERMODY:

14:58:41 23 Q. But you didn't study their compensation to

14:58:43 24 confirm that, did you?

14:58:45 25 MR. KIERNAN: Object to form.

14:58:47 1 THE WITNESS: I didn't study their compensation

14:58:48 2 to confirm what?

14:58:49 3 BY MS. DERMODY:

14:58:49 4 Q. That the other companies didn't make a global

14:58:52 5 change to compensation. That's not an empirical

14:58:59 6 statement, is what I'm asking you.

14:59:01 7 A. That's not an empirical statement.

14:59:04 8 Q. Dr. Shaw, other than what you've stated in your

14:59:18 9 report and testified to today, is there anything else in

14:59:22 10 the Hallock report that you disagree with?

14:59:34 11 A. I've stated that I felt there were no avenues

14:59:37 12 whatsoever by which he has shown that there was an impact

14:59:41 13 from pay suppression to all or nearly all employees. I

14:59:47 14 can't say that there isn't anything else in his entire

14:59:49 15 report I wouldn't disagree with. I didn't look at it

14:59:52 16 with that in mind.

14:59:54 17 Q. Other than what's in your report and what

14:59:56 18 you've said here today, do you have any other opinions

14:59:59 19 about what you just said about Dr. Hallock's conclusions?

15:00:05 20 A. I believe he hasn't shown any evidence

15:00:08 21 whatsoever that there -- that pay suppression was -- was

15:00:14 22 propagated to all or nearly all employees.

15:00:17 23 Q. So your primary criticism of him is that he

15:00:20 24 hasn't shown the actual pay decisions and the impact that

15:00:24 25 resulted from the no cold calling; is that correct?

15:00:27 1 MR. KIERNAN: Object to form.

15:00:31 2 THE WITNESS: I believe he hasn't looked

15:00:33 3 carefully at the pay practices that are actually utilized

15:00:37 4 by these companies and that this is a pay performance

15:00:39 5 environment and that as a result of that, the -- that

15:00:43 6 there would not be propagation from a few employees to

15:00:47 7 many or all employees.

15:00:49 8 BY MS. DERMODY:

15:00:49 9 Q. Okay. And other than what you've just said, is

15:00:52 10 there anything else you would say that's not already

15:00:54 11 covered in your report or that you've testified to that's

15:00:57 12 an opinion that you would express in this case about

15:01:00 13 Dr. Hallock's work?

15:01:08 14 A. About his report.

15:01:09 15 Q. Yes.

15:01:12 16 A. I don't have any line-by-line commentary on his

15:01:16 17 report.

15:01:17 18 Q. Okay. So there is nothing else to add. I just

15:01:19 19 want to make sure.

15:01:21 20 A. Correct.

15:01:22 21 Q. Okay. I'm just going to ask you, in terms of

15:01:27 22 today's deposition, did you meet with counsel to prepare

15:01:30 23 for it?

15:01:32 24 A. Yes.

15:01:33 25 Q. And when was that?

16:41:16 1 I, Rosalie A. Kramm, Certified Shorthand
16:41:16 2 Reporter licensed in the State of California, License No.
16:41:16 3 5469, hereby certify that the deponent was by me first
16:41:16 4 duly sworn and the foregoing testimony was reported by me
16:41:16 5 and was thereafter transcribed with computer-aided
16:41:16 6 transcription; that the foregoing is a full, complete,
16:41:16 7 and true record of said proceedings.

16:41:16 8 I further certify that I am not of counsel or
16:41:16 9 attorney for either of any of the parties in the
16:41:16 10 foregoing proceeding and caption named or in any way
16:41:16 11 interested in the outcome of the cause in said caption.

16:41:16 12 The dismantling, unsealing, or unbinding of the
16:41:16 13 original transcript will render the reporter's
16:41:16 14 certificates null and void.

16:41:16 15 In witness whereof, I have hereunto set my hand
16:41:16 16 this day: July 6, 2013.

16:41:16 17 _____ X _____ Reading and Signing was requested.

16:41:16 18 _____ Reading and Signing was waived.

16:41:16 19 _____ Reading and signing was not requested.

16:41:16 20

16:41:16 21

16:41:16 22 ROSALIE A. KRAMM

16:41:16 23 CSR 5469, RPR, CRR

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